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THE

# CRIMINAL LAW

OF THE

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AS CONTAINED IN THE EXISTING REGULATIONS AND ACTS

WITH

STATEMENT OF CRIMES AND PUNISHMENTS, INDICES, &c.

AND ALSO

The Circular Orders of the Foujdaree Adalut.

---

COMPILED AND ARRANGED IN ACCORDANCE WITH RECENT MODIFICATIONS,

6145

BY

C. R. BAYNES, Esq.

CIVIL AND SESSION JUDGE OF MADURA.

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# PREFACE.

My object in compiling the following pages, has been to facili-
.te the systematic study of the Criminal Law, as at present in
orce in the Provinces of this Presidency: and imperfect as a first
ttempt to bestow any order on a confused mass of matter, scatter-
ed without method or arrangement over a period of many years,
nust necessarily be, I venture to hope that it will not be found
vholly unsuccessful.

A few words will serve to explain the difficulties which present-
:d themselves to my undertaking, and the manner in which I have
ndeavoured to meet and overcome them. Having separated from
e Civil Judicial, and Revenue Regulations, those which related
the Criminal Law, several methods of arrangement were open
ny choice. The first—that which would have been the easiest,
vell as most likely to win credit to myself—was a classified
gest, or Codification, in which the subjects should be broken
to Books and Chapters, and the various provisions of the laws
ven in numbered Paragraphs, with the authorities in the margin;
it this plan would have altogether divested the work of a charac-
:, which I considered it essential, that it should to a certain
tent possess—viz. an "Edition of the Regulations:" it would
e formed it may be, a useful Epitome or commentary for study,
would have been unfitted for practical daily use and quota-
—Again, I might have made it a simple re-print of the exist-
Regulations in their order of publication—thus leaving un-
ected an evil which all must have felt in using the present
.ions, viz. that when perusing an enactment of any particular
r, it is only by going through the whole of the subsequent Re-
ulations, that the reader can be sure that it has not been repealed,

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modified, or added to. Under these considerations, I resolved t attempt a middle course, and while retaining all the principal Re gulations, in their old separate and consecutive form, I have in corporated with them, and inserted in their proper places, thos corrections, modifications and additions which have been made b subsequent enactments.—Thus for example, the object of Reg. IX of 1816 was to consolidate into one, all previous Regulations, a fecting the office, and concerning the duties of Magistrate; I hav therefore, in what is in fact the "Book of the Magistrate" pp. 6 —96, retained that Regulation as the ground work; and as i when published, brought up the law *then* existing, to one centre so have I *now* endeavoured to bring in all that has since been enacted on the subject; the Sections of the *old* Regulation being distinguished from the additions, and insertions, by having *their* numbers at the *head*, while *those* of the others are placed at the foot, and in accordance with this method the whole work has been arranged as follows:

| | |
|---|---|
| Foujdaree Udalut.................. | Reg. VII of 1802. |
| Session Courts....................... | " VIII of 1802, and XV of 180? |
| Perjury and Forgery................ | " VI of 1811. |
| Magistrate............................ | " IX of 1816. |
| Criminal Courts..................... | " X of 1816, and VI of 18 |
| Native Police......................... | " XI of 1816. |
| Abkaree............................... | " I of 1820. |
| Salt and Tobacco.................... | " V of 1831. |
| Customs............................... | " VI of 1844. |
| State Offences....................... | " V of 1841. |
| Military Law......................... | " XIX of 1847. |
| " Police............................. | " VII of 1832. |

Again, in completely following out this plan, there was t difficulty, that in many of the subjects, those enactments wh govern the Magistrate, Criminal Courts, and Session Courts, spectively, were so mingled, and combined, that any attempt to parate them, would have created, rather than remedied confusion. I have therefore in such cases modified the plan, separating n the duties of the various tribunals, in regard to these subjects, but

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the subjects themselves—a method which has given rise the Sections on "Perjury and Forgery," "Abkaree," "Customs, Salt and Tobacco," "State Offences," "Military Law," and "Miry Police"—nor am I without hope that this will be found useful,—most of these subjects lie, as it were, without the ordinary course of business in the Courts, and it will not be inconvenient, either to Magistrate, Criminal, or Session Judge, on finding a case for his disposal, say for instance under the Custom Laws, to turn to where all that he requires to know on the subject, will be found consolidated. Anxious however to meet all objections, I have endeavoured obviate any inconvenience which might arise, from such an arrangement not presenting the *whole* of the duty of each respective functionary, on *all* subjects, to him at one view, by preparing an Index to the Regulations on a plan which will effect that end, and which, in conjunction with the Statement of Crimes and Punishments, will tend I trust greatly to facilitate the study of any one particular subject.

The considerations which governed me in arranging the "Circular Orders" will be found explained in a note at their commencement. The two Indices which accompany them will I hope render them as available as ever, when wanted by "*date*" or "*subject*"—while the plan of their arrangement by "*Regulations*" will tend to assure the student that while reading an enactment, he has also before him all the orders by which it may have been explained or enforced.

For the sake of brevity, rescinding and rescinded enactments have been alike omitted—the complete copies of the original Regulations, which are in every office, will supply the *history* of the Law on any particular subject, should curiosity, or necessity require the information—and for the same reason the marginal abstracts have not been inserted—a practice which is now adopted in the acts of the Supreme Government. Alterations of the text *made by Regulations* have been inserted in Italics.

In conclusi[illegible] aly to beg indulgence for whatever errors, and [illegible] may, and doubtless many have, crept [illegible] ost care—no one perhaps can under-

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stand what great and constant labour a work *apparently* so easy has required—it has occupied all the time, which for more than two years, I have been enabled to spare from my public avocations, and is still far from being as complete as I could wish—my fellow servants will however, I am confident, receive it, as I would have them, not as a subject for criticism, which it deprecates, but as the first step in the road of future improvement: and I trust therefore that whatever errors may be discovered by, or whatever suggestion may occur to any individual, he will have the goodness to communicate it to me for the amendment of any subsequent edition.

I must not conclude without recording the valuable information and assistance, on all points connected with the law and practice of Bengal, which I have derived from the work of Mr. Beaufort of the Bengal Civil Service.* I have made free use of it, as will appear from the notes, and take this opportunity of expressing my obligations, and sense of its value.

Madura, *September*, 1848.

* A Digest of the Criminal Law of the Presidency of Fort William, &c. Calcutta, Ostell and Lepage, 1846.

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# INDEX

## TO THE REGULATIONS AND ACTS.

NOTE.—This Index is purposely made as brief as possible; it is intended rather to point to where information should be sought for, than to supply it in an abstract form, as has been hitherto usual in Indices appended to the Regulations. At the same time it is hoped that the synopses under the leading heads of Criminal, Session, and Foujdaree Courts, Magistrate, and Native Police, will be found useful as condensed Memoranda of the several duties appertaining to them respectively.

It must be particularly noted also, that no designation of any crime will be found herein—all offences being alphabetically arranged in the separate Table of Crimes and Punishments, their repetition here would serve no useful purpose.


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| | Riotous assembly | ... | iii | iii | 1831 | 37 |
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GSL

# STATEMENT

OF

# CRIMES AND PUNISHMENTS.

# ERRATA.

## STATEMENT OF CRIMES AND PUNISHMENTS.

At page xiii, under 'Abbreviations used,' insert "H. P. Head of Police."
"P. A. Police Ameen."

" " xv, Bribery—in 'Remark' for "Cl. 7, Sec. II, Reg. XV, 1803," read "Cl. 2, Sec. XVIII, IX, 1822, which see at p. 102, by imprisonment for not less than one or more than five years."

" " xix, under 'Housebreaking' for "Cl. 7, Sec. II, Reg. XV, 1803, p. 36," read "Sec. XXI, Reg. VII, 1802, p. 22."

" " xx, Libel—for "S. C." read "C. C."

" " xxix, under 'Theft' for "Cl. 7, Sec. II, Reg. XV, 1803, page 36," read "Sec. XXI, Reg. VII, 1802, page 22."

## REGULATIONS AND ACTS.

At page 41, line 1, for "1802" read "1803."
" " 59, " 2 of note, after committal, for "," read ":"
" " 94, " 12, for "Sec. XXIV—XXVII" read "XXXIV—XXXVIII."
" " 106, " 14, for "instanec" read "instance."
" " 120, " 1 of note, for "Cl. 3" read "Cl. 2."
" " 128, " 28, for "trival" read "trivial."
" " 194, " 6 of note, dele " before "the words" and insert " before "Rupees".

## CIRCULAR ORDERS.

At page 18, line 47, dele "be."
" " 32, " 15, for "1833" read "1823."
" " 39, " 31, for "28th" read "29th."
" " 41, " 41, dele "Regulation IV, 1819."
" " 58, " 5, for "Act XX, 1845" read "Regulation VII, 1832."
" " " " 6, for "Article 62" read "Sec. VII."

## INDEX TO CIRCULAR ORDERS.

At page 5, Warrant—for "XXXIII" read "XXIII."

# STATEMENT OF CRIMES AND PUNISHMENTS.

## ABBREVIATIONS USED.

| | |
|---|---|
| D. M. L. | Discretionary Punishment under Mahomedan Law. |
| S. C. | Session Court. |
| C. C. | Criminal Court. |
| M. | Magistrate. |
| J. P. | Justice of the Peace. |
| F. U. | Foujdaree Udalut. |
| C. R. | Civilian's Remembrancer. |
| V. M. | Civilian's Vade Mecum. |

| CRIME. | By whom cognizable. | Punishment. | Law. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| **ABDUCTION.** Unlawfully taking or causing to be taken, any unmarried girl, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.................. | S. C. | D. M. L. Imprisonment not exceeding 7 years, and stripes not exceeding 195.. | 7 | II | XV | 1803 | 36 | In the case of this, and other offences, not specifically provided for by any Regulation or Act, but which may be liable to D. M. L., the S. C. exercises its discretion, within the limits prescribed by Cl. 7, Sec. II, Reg. XV of 1803: which enactment however provides for the reference of any case to the F. U., for which the Session Judge may deem that measure of punishment inadequate; and that Court may at its discretion, pass any sentence short of capital punishment, under Cl. 3, Sec. VII, Reg. XV of 1803. |
| **ABORTION**—Procuring. Unlawfully administering to, or causing to be taken by a woman, any poison, or other noxious thing—or unlawfully using any instrument or other means with the like intent.................. | " | Ditto. | " | " | " | " | " | Ditto. |
| **ABUSE.** Of authority, by Native Police Officers. Petty cases—See "Petty offences." More serious cases.................. | M. | Fine not exceeding 50 Rs. or imprisonment not exceeding one month. ...... | .... | III | III | 1819 | 139 | Aggravated cases of this crime, for which this punishment may be insufficient, are committable to the S. C.; by which, if convicted, they are punishable under Cl. 7, Sec. II, Reg. XV of 1803. The injured party may, at his option, bring an Action in a Civil Court; this law is applicable to Native Police employed in Military Cantonments.—*C. O. F. U. 10th March*, 1829. |
| Aggravated cases .................. | C. C. | D. M. L. Imprisonment not exceeding 6 months, and fine not exceeding 200 Rs., commutable if not paid to 6 months' further imprisonment........ | .... | VII | X | 1816 | 99 | |
| **ABUSIVE LANGUAGE**—See "Petty Offences." | | | | | | | | |

| CRIME. | By whom cognizable. | Punishment. | LAW. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| **ACCESSARY.** | | | | | | | | |
| To Robbery with murder ............... | S. C. | Death. | 1 | IV | XV | 1803 | 40 | Accessaries or abettors in crimes and misdemeanors are generally liable to the same punishment as the principals. The cases of parties receiving stolen goods, or affording aid to felons are specially provided for. See "Attempt." |
| To do with serious violence ...... | " | Transportation for life. | 2 | " | " | " | " | |
| To do without such violence...... | " | Fourteen years' Imprisonment. | 3 | " | " | " | 41 | |
| **ADULTERY.** | " | Imprisonment not exceeding 7 years, and stripes not exceeding 195. ........... | 7 | II | " | " | 36 | This crime is punishable by death under the Mahomedan Law; but the practice of the Courts may be said to have fixed the maximum punishment within the discretion allowed by Cl. 7, Sec. II, Reg. XV of 1803. It is requisite that the charge be preferred to a European authority, exclusively by the wife against the husband, or the husband against the wife. |
| **ACCUSATION.** | | | | | | | | |
| False before Police ............... ..... | C. C. | Imprisonment not exceeding 6 months. | ... | II | IX | 1832 | 139 | Prosecutors or Complainants alone are punishable under this enactment—the imprisonment must be without irons. |
| Do. do. Magistrate under Sections XXXII and XXXIII, Reg. IX of 1816. | M | Imprisonment for 15 days, or fine not exceeding 50 Rupees, save in cases specified when it may extend to 200... | .. | XXXV | " | 1816 | 80 | The imprisonment must be without labour.—*C. O. F. U. 20th Sept.* 1824. *Partially* groundless complaints are not punishable under this law.—*F. U. 7th Jan.* 1837, *C. R.* 107. |
| **AFFRAY.** | | | | | | | | |
| Inconsiderable—See "Petty offences." | | | | | | | | |
| More serious cases ..................... | C. C. or M. | D. M. L. Imprisonment for 6 months, and fine as far as 200 Rs. and if not paid further imprisonment for 6 months | .. | VII | X | " | 99 | Cases appearing to require still more severe punishment may be committed to S. C. by whom they are punishable at discretion under Cl. 7, Sec. II, Reg. XV of 1803. |
| **AIDING.** | | | | | | | | |
| Escape of Robbers..................... | C. C. | Ditto. | " | " | " | " | " | See C. O. F. U. 9th October 1811. Cases requiring more severe punishment may be committed to S. C. for trial under Cl. 7, Sec. II, Reg. XV of 1803. |
| Secreting robbers against whom Warrants are out, supplying them with food and other necessaries, adopting other means to enable them to escape apprehension. | | | | | | | | |
| **ARSON**.................................. | S. C. | D. M. L. Imprisonment not exceeding 7 years, and stripes not exceeding 195. | 7 | II | XV | 1803 | 36 | See Remark on "Abduction." The highest punishment in cases of this crime, for which a precedent can be found, is 14 years' imprisonment with hard labor in irons. |
| **ASSAULT.** | | | | | | | | |
| By European British subjects on Natives. | M. or J. P. | Fine not exceeding 500 Rs. and in default of payment imprisonment not exceeding two months. ............... | .... | " | II | 1820 | 168 | |
| Inconsiderable—See "Petty offences." | | | | | | | | |
| More serious cases......................... | C.C. or M. | D. M. L. Imprisonment not exceeding 6 months, and fine not exceeding 200 Rs commutable if not paid to 6 months' further imprisonment.................. | .... | VII | X | 1816 | 99 | |
| Aggravated and severe..................... | S. C. | Imprisonment not exceeding 7 years, and stripes not exceeding 195............. | 7 | II | XV | 1803 | 36 | See Remarks on "Abduction." |
| With intent to commit rape. ........... | Ditto | Ditto | " | " | " | " | " | Ditto.—See case of this description in C. R. p. 419, No. 335, in which prisoner was sentenced by F. U. on reference, to 2 years' imprisonment with hard labor in irons. |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **ASSEMBLY—Unlawful.** | | | | | | | | |
| Riotously assembling in a manner indicating an intention to commit an unlawful act, or inconsistent with public tranquillity, and refusing to disperse when ordered by the Magistrate.. .... | M. | Fine not exceeding 50 Rs. or imprisonment without labor not exceeding one month. .. .................... | .... | ,, | III | 1831 | 87 | |
| Assembling in bodies of 12 or more for riotous or rebellious purposes, or for the purpose of interfering with, or obstructing the collection of the revenue, and refusing to disperse when called upon to do so by the local authorities, or re-assembling after having dispersed...... | S. C. | Imprisonment not exceeding 10 years nor less than 3. ........................ | .... | III | ,, | ,, | 37 | |
| **ATTEMPT.** | | | | | | | | |
| At Robbery by open Violence.......... | ,, | Same as Robbery........................ | .... | III & IV | XV | 1803 | 38 | The punishment of these crimes varies according to the circumstances which may have resulted from the attempt, as murder, serious injury, &c. as does that of aiders and abettors therein. See "Accessary." |
| At House breaking...................... | S. or C. C. | Same as Housebreaking................. | .... | II | VI | 1822 | 117 | |
| At Theft............................. | ,, | Same as Theft.......................... | .... | III | ,, | ,, | 118 | |
| **BADGES.** | | | | | | | | |
| Wearing or causing to wear, resembling or intended to resemble those of Govt. Servt. | M. | Fine and Imprisonment as for Misdemeanor.................. | .... | II | XVIII | 1835 | 89 | |
| Wearing or being accessary to wearing any Badge without name of party by whom wearer is employed..... ...... | | Ditto. | .... | III | ,, | ,, | 90 | |
| **BRIBERY.** | | | | | | | | |
| Bribing any public officer or servant on establishment of Collector, or any Head Inhabitant or other village officer. | C. C. | Fine double the amount of bribe proved to have been paid; and in default of payment imprisonment not exceeding one year or until fine be paid......... | 2 | XVII | IX | 1822 | 102 | Aggravated cases of this description may be committed for trial before the S. C. as provided by Cl. 1, Sec. XVIII, Reg. IX of 1822, and would then be punishable under Cl. 7, Sec. 11, Reg. XV of 1803. |
| **CALUMNY.** | | | | | | | | |
| See "Petty Offences." | | | | | | | | |
| **CATTLE.** | | | | | | | | |
| Stealing—Trivial cases, see "Petty Offences." | | | | | | | | |
| Graver cases .... ............. | C. C. or M. | Imprisonment not exceeding 6 months, and stripes not exceeding 150. ......... | .... | VII | X | 1816 | 99 | |
| Other cases ................. | C. C. | Imprisonment with hard labor not exceeding 2 years, and stripes not exceeding 150. .......................... | 4 | III | VI | 1822 | 120 | |
| Malicious injury to .................. | ,, | Imprisonment not exceeding 2 years .... | 1 | VIII | XIII | 1832 | 123 | |
| Petty cases of ....................... | M. | Imprisonment not exceeding one month, or stripes not exceeding 90............ | 2 | ,, | ,, | ,, | 79 | |
| Ditto ................................ | Nat. Pol. | Imprisonment with labor not exceeding 10 days,.............................. | ,, | ,, | ,, | ,, | 135 | |

| CRIME. | By whom cognizable. | Punishment. | LAW. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| CHILD. | | | | | | | | |
| Stealing | S. C. | D. M. L. Imprisonment for 7 years with labor, and stripes not exceeding 195 | 7 | II | XV | 1803 | 36 | |
| Sale of—by parent, save in time of famine | C. C. | D. M. L. Imprisonment not exceeding 6 months and fine not exceeding 200 Rs.—Commutable if not paid to 6 months further imprisonment. | .. | VII | X | 1816 | 99 | In time of famine this act is not punishable, see C. O. F. U. 17th September 1839. |
| COIN. | | | | | | | | |
| Forgery of, or procuring to be forged | S. C. | Imprisonment, in banishment from the District, for not less than 7 or more than 14 years, with lashes not exceeding 150, and exposure by Tusheer | 2 | V | II | 1822 | 55 | If the Session Judge consider 7 years too severe a sentence, he may refer the trial to the F. U. who are authorized by Cl. 3, Sec. V, Reg. II of 1822, to mitigate the sentence at their discretion. |
| Uttering, knowing it to be counterfeited | " | Imprisonment not exceeding 7 years with—in aggravated cases—exposure by Tusheer; and in instances of repetition of offence, after previous conviction and punishment, exposure by Tusheer and stripes not exceeding 150, at discretion of Session Judge | 1 | VI | " | " | 56 | |
| Clipping, or filing, drilling, defacing or debasing | " | Ditto. | 2 | " | " | " | " | |
| Possessing counterfeit, without shewing good and sufficient cause. | M. | Fine equal to four times nominal value of such counterfeit Coin; or in default of payment imprisonment not exceeding 6 months | .... | VII | " | " | " | |
| Possessing or making instruments for forging. Knowingly making, mending, buying, selling, concealing, or possessing any instrument used exclusively for coining money without lawful authority. | C. C. | Imprisonment and hard labor in irons for not more than one year | 3 | IV | VI | 1827 | 57 | |
| For second offence committed after conviction of the first | " | Imprisonment and hard labor in irons for not more than eighteen months, and stripes not exceeding 150 | " | " | " | " | " | |
| For third or any subsequent offence | S. C. | Imprisonment and hard labor in irons, in banishment at the discretion of the Judge, for not more than seven years, with stripes not exceeding 195. | 4 | " | " | " | " | |
| CONNIVING. | | | | | | | | |
| Guard—at Escape of Prisoners | " | Imprisonment for not less than two or more than five years | 2 | XI | XIII | 1832 | 100 | |
| CONSPIRACY. | " | D. M. L.—Imprisonment not exceeding 7 years with hard labor, and stripes not exceeding 195 | 7 | II | XV | 1803 | 36 | See remarks on "Abduction." |
| Ratified by oath, bond or agreement, to alter or defeat the law by threatening Government or its Officers. | " | Imprisonment for not less than 3 or more than 10 years. | .... | IV | III | 1831 | 37 | |

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| **CONTEMPT—of Court.** Magisterial or Criminal. | | | | | | | | |
| By using menacing gestures or expressions: or otherwise obstructing justice in presence of officer presiding. ...... | Officer presiding | Fine not exceeding 200 Rs. or in default of payment, imprisonment not exceeding one month....... ............... | .... | I | XXX | 1841 | 95 | |
| **CORPSE.** Concealing one found with marks of violence, without giving information to an Officer empowered to hold an inquest... ...... ......... ... ..... | C. C. or M. | D. M. L. Imprisonment for 6 months, and fine of 200 Rupees, commutable if not paid to 6 months' further imprisonment. ........................ | .. | VII | X | 1816 | 99 | This offence was ruled to be thus punishable by the F. U. on the 12th October 1836. |
| **CUSTOMS.** Frauds relating to, or receiving or purchasing articles knowing them to be smuggled. ........................ | C. C. | Fine not exceeding Rs. 1[illegible], or in default imprisonment for 3 months. .......... | .... | XXI | I | 1812 | 155 | |
| Unauthorized collection of— Petty cases of, By Native Officers. . ............ | M. | Penalties prescribed in Sec. XXXII and XXXIII, Reg. IX of 1816. .......... | .... | XLV | IX | 1816 | 156 | In both these cases the aggrieved party is also at liberty to prosecute for damages in Civil Court. |
| By others ........................ | ,, | Do. excepting corporal punishment... | .... | XXIV | I | 1812 | 157 | |
| More serious cases of ............. | C. C. | Imprisonment not exceeding 2 years, or fine, or both. ........ ............... | .. | LV LVII | VI | 1844 | ,, | |
| Obstructing officer of, in duty .......... | ,, | Imprisonment not exceeding 6 months, or fine not exceeding Rs. 1000—or both. | .... | LIV | ,, | ,, | ,, | |
| Vexatious detention, &c. of goods at frontier Chokes....... ........... ... | Coll. or M. | Imprisonment not exceeding 6 months. and fine not exceeding 500 Rs. commutable if not paid to further imprisonment of 6 months. ................ | .... | XV | ,, | ,, | 155 | |
| **DACOITS.** Belonging to a gang of. ............... | S. C. | Transportation for life, or imprisonment for a less period....... ............ | ... | I | XXIV | 1843 | 38 | |
| **DECLARATION.** Making false, under Act XXI of 1837 .. | ,, | Imprisonment not exceeding one year, or fine, or both. ...... . ...... ...... | .. | IV | XXI | 1837 | 60 | That is, if the offence be committed by a party amenable to the Criminal jurisdiction of the Mofussil Courts. |
| **DISGUISING.** The appearance of, or melting ornaments or other articles formed of the precious metals, &c. with a fradulent intent........ ...... .......... | C. C. | Imprisonment not exceeding two years. | .... | IX | XIII | 1832 | 123 | |
| **EMBEZZLEMENT.** Ordinary cases ....... ............ | ,, | D. M. L. Imprisonment not exceeding 6 months, and fine not exceeding 200 Rs. commutable if not paid to further imprisonment for 6 months. .......... | .... | VII | X | 1816 | 99 | See C. O. F. U. 1st Sept. 1813—and Proc, F. U. 11th May 1835, in V. M. page 49, No. XLVI. |
| More serious cases.. ........ ........ | S. C. | Imprisonment with hard labor not exceeding 7 years, and stripes not exceeding 195.......................... | 7 | II | XV | 1803 | 36 | See Remarks on "Abduction." |

| CRIME. | By whom cognizable. | Punishment. | Law. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| **ESCAPE.** | | | | | | | | |
| If by convict under sentence of temporary imprisonment. .................. | C. C. | Additional imprisonment not exceeding 2 years, and stripes not exceeding 150. | 2 | V | VI | 1822 | 123 | If a prisoner in escaping, or attempting to escape, wound or inflict severe personal injury upon any one, he is directed by Cl. 4. Sec. V, Reg. VI of 1822, to be brought to trial before the S. C. for that specific offence, by which, according to the nature and consequences of his act, he may be punished under the general regulations—or if he be already under sentence for life—under the provisions of Act XVIII of 1835. |
| If by prisoner confined on requisition of security for good behaviour. ...... | " | Imprisonment for 2 years, and stripes not exceeding 150. ...... ........ ..... | " | " | " | " | " | |
| Do. under examination .... ......... ... | " | Imprisonment not exceeding 6 months. | 3 | " | " | " | " | |
| If by convict under sentence of imprisonment for life.................... | S. C. | Transportation for life subject to confirmation by F. U. or stripes not exceeding 195.......................... | .... | II | XVIII | 1835 | 47 | |
| Permitting—See "Conniving." | | | | | | | | |
| Allowing by negligence—See "Neglect." | | | | | | | | |
| **EMIGRANT.** | | | | | | | | |
| Contracting with, making with any Native of India any contract for labour to be performed in any British or Foreign Colony without the territories of the East India Company, except in cases specially allowed by law. ...... | M | Fine not exceeding 200 Rupees for each individual so contracted with, and in default of payment imprisonment not exceeding 3 months. ............ | .. | II | XIV | 1839 | 90 | Special exceptions are made by Act XV of 1842 in favor of the Mauritius, and by Act XXI of 1844 in favor of British Guiana, and Trinidad. Emigration to these places from the ports of Calcutta, Madras and Bombay, is permitted under the restrictions and penalties therein specified. |
| Aiding or abetting any one being Native of India in emigrating for such purpose........ ...... ................ | " | Ditto. | .... | " | " | " | " | |
| **EXTORTION.** | | | | | | | | |
| See "Abuse of Authority." | | | | | | | | |
| **FALSE.** | | | | | | | | |
| Weights and measures, using...... .... | " | Imprisonment not exceeding 15 days, or fine not exceeding 50 Rs. except the offender be of classes specified therein. | .... | LIV | XI | 1816 | 87 | |
| Complaints of petty offences—See "Petty offences." | | | | | | | | |
| Accusations, making before Native Police—See "Accusation." | | | | | | | | |
| **FALSE PRETENCES.** | | | | | | | | |
| Cheating by...... .............. | C. C. | D. M. L. Imprisonment not exceeding 6 months, and fine not exceeding 200 Rs. commutable if not paid to further imprisonment not exceeding 6 months. | .. | VII | X | " | 99 | Offences of this nature were declared punishable by the Mahomedan Law Officers, upon reference made to them by F. U. and adverted to in their proceedings of the 23d Jan. 1837, which see reported in C. R. No. 384, page 173. |
| Aggravated cases .................. | S. C. | Imprisonment not exceeding 7 years, and stripes not exceeding 195......... | 7 | II | XV | 1803 | 36 | |
| **FORGERY.** | | | | | | | | |
| All fraudulent and injurious fabrications or alterations of written or printed papers, of whatever description—all counterfeit seals or signatures thereto: and illicit imitation of any public stamp, or stamp paper established by Govt... | " | Imprisonment and hard labor for not less than 4, nor more than 7 years, in banishment at discretion, exposure by Tusheer with stripes not exceeding 150...................... | 1 | III | VI | 1811 | 52 | The infliction of stripes and Tusheer, is at the discretion of the Judge. The minimum punishment is mitigable by the F. U. on recommendation under Sec. V, Reg. I of 1825. |
| Procuring or causing any such Forgery.. | " | Ditto. | 3 | IV | " | " | 54 | |

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| **FRAUD.** Petty—See "Petty offences." More serious cases ...... ............... | C. C. | D. M. L. Imprisonment not exceeding 6 months, and fine not exceeding Rs. 200, commutable if not paid to further imprisonment not exceeding 6 months. | .. | VII | X | 1816 | 99 | No express legislative enactment defines what extent of Fraud renders a case committable; but the F. U. have observed, "That the amount involved in the Fraud would in most cases lead to the same jurisdiction as the same amount in a case of Theft. If the provisions of Sec. VII, Reg. X of 1816 do not embrace a sufficient punishment, the case must be committed to the S. C."—*F. U. 28th Oct. 1844.* |
| Extensive.................................... | S. C. | ...... ............... ........ | 7 | II | XV | 1803 | 36 | |
| **GAMBLING.** See "Petty offences." | | | | | | | | |
| **GUNPOWDER.** Collecting or keeping in one place, or within places not exceeding 3 miles distance from each other, a quantity exceeding 50 lbs. without license. .... | M. | Forfeiture—and fine not exceeding Rs. 500.... ............................ | .... | II | XVIII | 1841 | 86 | |
| **HIGHWAY ROBBERY.** | S. C. | The penalties of "Robbery by open violence" which see.... ............... | .... | III & IV | XV | 1803 | 38 | Highway Robbery by a single unarmed person does not fall within the definition of "Robbery by open violence" in Sec. III, Reg. XV of 1803. The Mahomedan Law will however in such cases declare a party convicted thereof liable to "Hud" and amputation of two limbs which under Sec. XXI, Reg. VII of 1802 is commutable to 14 years' imprisonment.—See on this point C. O. F. U. 20th Nov. 1835. |
| **HOMICIDE**—Culpable. Not amounting to murder............. | " | Imprisonment temporary, or for life, according to circumstances. ........... | 2 | XV | VII | 1802 | 19 | Homicide if purely accidental, and done in the prosecution of a lawful act and without any malicious intention, is declared not punishable by Sec. IV, Reg. I of 1818 (at p. 29). In regard to the mode of dealing with such cases, see the orders on the subject at C. O. p. 40. |
| **HOUSE BREAKING.** Breaking, or attempting to break, into a place of habitation, or receptacle for the custody of property, with intent to steal; or in any manner aiding in and abetting the same. ..... ........ | C. C. | Imprisonment with hard labor for not more than two years, with stripes not exceeding 150.............................. | 6 | II | VI | 1822 | 119 | |
| If committed by one before convicted of any heinous offence, or of notoriously bad character, or employed as Watchman, Guard or Police Officer, or if property be stolen exceeding in amount or value 100 Rupees. ................ | S. C. | Imprisonment with hard labor for not more than seven years, with or without stripes not exceeding 195.............. | 7 | " | XV | 1803 | 36 | |
| If attended with wounding or corporal injury not endangering life. ......... | " | Imprisonment in banishment for not more than fourteen years, with stripes not exceeding 195. ...... ........ | 4 | " | VI | 1822 | 118 | |
| If accompanied with an attempt to commit murder, or with such corporal injury as to endanger life. ............. | " | Transportation for life, with or without stripes not exceeding 195....... ...... | 3 | " | " | " | " | Cases of this nature must be referred to the F. U.—Session Judge may recommend mitigation if he see fit. |

| CRIME. | By whom cognizable. | Punishment. | LAW. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| **LIBEL.** Publication of libellous paper .. ...... | S. C. | D. M. L.—Imprisonment not exceeding 6 months, and fine not exceeding Rupees 200, commutable if not paid to further imprisonment not exceeding 6 months.......................... | .. | VII | X | 1816 | 99 | The Law Officers of the F. U. declared the act "of affixing in a public street an obscene paper, aspersing in language the most disgraceful a respectable native family" to be punishable under the Mahomedan law. See proceedings of the F. U. or the case reported in C. R. No. 577, page 269—a case requiring more severe punishment might be committed to the S. C. for disposal under Cl. 7, Sec. 11, Reg. XV, 1803. |
| **LIQUOR—SPIRITUOUS, &c. &c.** Mixing or permitting to be mixed noxious ingredients in the distillation of Arrack. .... ............ | " | Imprisonment and hard labor on the public roads not exceeding three years | 7 | VI | I | 1820 | 142 | |
| Sellers of—allowing drunkenness or riot in their Shops, harbouring thieves or persons of notoriously bad character, bartering or pawning liquor for, or receiving in pawn for grain, apparel or other effects........ .............. | M. | A fine not exceeding 200 Rupees; to be levied by distress and sale of the property of the offender: if not sufficient to pay the fine, or otherwise in default of payment, imprisonment not exceeding 6 months............ ......... | 8 | " | " | " | " | |
| Distilling or selling without a license, or at any other place than that mentioned in the license, or after the expiration of the license and before having obtained a renewed license.......... | C. C. | Fine not exceeding 400 Rupees: to be levied by distress and sale of the property of the offender; if not sufficient to pay the fine, or otherwise in default of payment, imprisonment and hard labor not exceeding 12 months. ...... | 9 | " | " | " | " | |
| Manufacturing or selling without a special license from the Officer in immediate charge of the Police, spirituous liquors or intoxicating drugs within the limits of Military Bazar Station... | Officer in charge of Police in military limits. | Imprisonment with hard labor not exceeding one month, or stripes not exceeding 50, and for aggravated offences both.......... ................ | .... | XVI | VII | 1832 | 193 | The corporal punishment must not be inflicted for a *first* offence. |
| Selling spirituous liquors or intoxicating drugs, without applying to the proper officer for registry, or neglecting to affix in the front of the shop a board containing a notice of License, in English and the language of the particular part of the country...... ........ | " | Imprisonment with hard labor not exceeding one month for the first offence—for a repetition of the offence corporal punishment not exceeding stripes 50.......................... | .... | LVII | " | " | 196 | |
| Any Native not being a vender duly licensed, having in his possession within the limits of any Military Bazar Station or Cantonment more than one bottle of spirituous liquor, or one seer of any intoxicating drug without a permit........ ...................... | " | Imprisonment with hard labor not exceeding one month for the first offence by the Commissariat, or other Officer in charge of the Police: for a subsequent offence, the offender is to be tried by a Court Martial, when corporal punishment not exceeding 50 stripes may also be adjudged. .... .......... | 1&2 | XVI | " | " | 193 | |

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|---|---|---|---|---|---|---|---|---|
| Any Native smuggling, or attempting to smuggle, within the limits of any Military Bazaar Station, &c., spirituous liquors or intoxicating drugs, or selling the same within the same limits to or for any European Non-commissioned Officer or Soldier, or European Woman, except as sanctioned by General Orders of Government in Canteens of European Regiments........ | „ | Imprisonment with hard labor not exceeding one month........ .......... | „ | „ | „ | „ | „ | For second or subsequent offence, the offender is to be tried by Court Martial, when stripes not exceeding 50 may also be awarded. |
| LOTTERY. | | | | | | | | |
| Publicly or privately keeping a place for, or drawing, or allowing to be drawn—not authorized by Govt...... | M. or J. P | Fine not exceeding 5000 Rupees........ | .... | II | V | 1844 | 95 | Half these fines are payable to the Informer. |
| Being concerned in—in various degrees. | „ | Fine not exceeding 1000 Rupees........ | .... | III | „ | „ | 95 | |
| MURDER—Wilful. | | | | | | | | |
| By whatever mode or instrument.. .... | S. C. | Death .................................... | .... | X | VIII | 1802 | 11 | All such cases are referrible to F. U., by which Court the sentence is mitigable unaer Cl. 2, Sec. VI, Reg. I of 1825. |
| Committed maliciously, but in manner not intended........ ........ ........ | „ | Do. | 1 | IV | I | 1818 | 28 | |
| MOSQUE—Polluting. | | | | | | | | |
| With intent to cast contempt on the building, or to annoy the worshippers generally, or any particular individual, or for any cause whatever ... .. .... | „ | D. M. L. Imprisonment not exceeding 7 years, and stripes not exceeding 195. | 7 | II | XV | 1803 | 36 | The F. U. under Cl. 3, Sec. VII, Reg. XV of 1803, might extend th s to any sentence not capital.—See proceedings of the F. U. on such cases, as reported in C. R. Nos. 192 and 193, pages 85 and 86. |
| NEGLECT. | | | | | | | | |
| Wilful, of guards of any description (not military) in lawful charge of convicts. | M. | Dismissal from public service.... .... | .... | XXIII | VIII | 1802 | 15 | If connivance or further criminality appear against them, they are to be committed to the S. C. and are punishable under Sec. XI, Reg. XIII of 1832, (see p. 100) by imprisonment for not less than 2 or more than 5 years. |
| Do. of do. in charge of prisoners, whether convicts or not.............. | „ | Ditto. | 1 | VII | I | 1810 | „ | |
| Culpable do. of do. being peons in charge of prisoners, whereby they may be enabled to effect their escape. | C. C. | Imprisonment not exceeding 6 months.. | 1 | XI | XIII | 1832 | 100 | |
| NUISANCES. | | | | | | | | |
| Local—disobedience of Magistrate's injunctions regarding ................ | M | Fine not exceeding 200 Rupees, commutable if not paid to imprisonment not exceeding one month........ ........ | .... | II | XXI | 1841 | 91 | |
| OATH—Unlawful. | | | | | | | | |
| Using or making any oath, bond, or agreement, in ratification of conspiracy to threaten Government or its Officers. | S. C. | Imprisonment not less than 3 or more than 10 years........................ | .... | IV | III | 1831 | 37 | See "Conspiracy." |
| OBSCENITY. | | | | | | | | |
| Petty cases—See "Petty Offences." | | | | | | | | |
| Aggravated cases,, ..................... | C. C. | D. M. L. Imprisonment not exceeding 6 months, and fine not exceeding Rupees 200, commutable if not paid to further imprisonment not exceeding 6 months.............................. | .... | VII | X | 1816 | 99 | See remark on "Libel." |

| CRIME. | By whom cognizable. | Punishment. | Law. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| **PERJURY.** | | | | | | | | |
| Giving intentionally and deliberately before a Court of Judicature, Magistrate or other authorized Public Officer, a false deposition upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceeding, Civil or Criminal, and upon a point material to the issue thereof. | S. C. | Imprisonment and hard labor for not less than four, nor more than seven years, in banishment at discretion, with exposure by Tusheer, and stripes not exceeding 150........................ | 1 | III | VI | 1811 | 52 | Mitigable by F. U. under Section V, Reg. I of 1825. |
| Suborning—such perjury........ ....... | " | Ditto. | " | " | " | " | " | In the event of Perjury being committed before the Sudder Udalut, that Court is empowered by Section III, Act XV of 1835, to transmit the offender to the Criminal Court at Chingleput, in order to his being committed for trial before the Session Court of that Zillah. |
| Or wilfully and deliberately giving two directly contradictory depositions on oath, or under a solemn declaration taken instead of an oath, on a matter of fact material to the issue of a judicial proceeding, with a corrupt intention........ ........ ......... .... | " | Ditto. | .... | II & III | III | 1826 | 54 | Ditto. |
| **PETTY OFFENCES.** | | | | | | | | |
| Affray........ ............ ............<br>Assault..................................<br>Abusive language.......................<br>Calumny.................................<br>False complaint.........................<br>False weights and measures...............<br>Fraud...... ...... ...... ...... ......<br>Cheating.......... ......... ...........<br>Embezzlement.......... ....... ........<br>Gambling...............................<br>Obscenity.............. ...............<br>Provisions—unwholesome, sale of......<br>Resistance to Magistrate's process......<br>Trespass......... ....... ........ | M. | D. M. L. Imprisonment in Zillah Jail or village choultry, not exceeding 15 days without labor; or fine not exceeding 50 Rupees; unless offender be paying to Government more than 10,000 Rupees annual revenue; or holding Ayma land paying a quit rent of more than 500; or Lakeraj land the annual produce of which exceeds 1000; in which case fine may extend to Rs. 200 | .. | XXXII | IX | 1816 | 78 | False complaint of "Petty offences," is declared to be thus punishable by Sec. XXXV, Reg. IX of 1816.—"Using false weights and measures" by Sec. LIV, Reg. XI of 1816.—Resistance to Process by Cl. 5, Sec. XVIII, Reg. IX of 1816.—"Fraud," "Cheating by false pretences," &c., "Embezzlement," "Gambling," "Obscenity," "Sale of Unwholesome Provisions," are all *offences;* and liable, under the Mahomedan law, to punishment in proportion to their enormity, and the injury done by them to the public welfare or peace:—petty degrees of them therefore, naturally fall within the provisions of this law, and the practice obtains accordingly. |
| Ditto. | H. P. or P. A. | Fine not exceeding 3 Rupees, commutable to imprisonment for 3 days without labor.......................... | .... | XXXIII | XI | " | 134 | In all petty cases, whether of theft, or misdemeanor, Heads and Ameens of Police are authorised by Cl. 2, Sec. IV, Reg. IV of 1821, and Act XXXIII of 1837—when they shall deem the punishments they are thus empowered to inflict, inadequate, to report the same to the Magistrate, for his final orders—but the offence *reported* must be within his competence—the Magistrate cannot on report order punishment in a case where the stolen property exceeds 5 Rupees in value. |
| Ditto. | Hd. of Vil. | Imprisonment in Village Choultry not exceeding 12 hours—or confinement in stocks not exceeding 6 hours, when condition of party may render that punishment not improper............. | 1 | X | " | " | 128 | |

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|---|---|---|---|---|---|---|---|---|
| Cattle stealing ............................ <br> „ injuring ............................ | M. | Imprisonment in Zillah Jail or Village Choultry not exceeding one month with labour, or stripes not exceeding 90.... ................................. | .... | XXXIII | IX | ,, | 78 | Cattle stealing declared to be thus punishable by Sec. XIII, Reg. VI of 1827,—and "Injuring" by Cl. 2, Sec. VIII, Reg. XIII of 1832. "Receiving" in petty cases was ruled to be punishable as petty theft itself, by F. U. C. O. 26th Nov. 1822. |
| Ditto ............ . ............ | H. P. or P. A. | Imprisonment not exceeding 10 days with labour. ...... .... ............ | 2 | VIII | XIII | 1832 | 135 | |
| Theft, petty, from person or place ...... <br> Receiving stolen property. ............ | M. | Imprisonment in Zillah Jail or Village Choultry not exceeding one month with labour, or stripes not exceeding 90........ ...... ............ . ...... | .... | XXXIII | IX | 1816 | 78 | |
| Ditto, and if not exceeding 5 Rupees, or attending with aggravating circumstances, or committed by persons of notoriously bad character........... | H. P. or P. A. | Imprisonment not exceeding 10 days with labour........................... | 1 | V | XIII | 1832 | 134 | |
| Ditto, and if not exceeding 1 Rupee and ditto...... ...................... | Head of Vil. | Imprisonment in Village Choultry not exceeding 12 hours; or imprisonment in stocks not exceeding 6 hours, when condition of party may render that punishment not improper ..... ...... | .... | VI | IV | 1821 | 129 | |
| **PREVARICATION.** | | | | | | | | |
| Before—or other contempt of—any Criminal Court.............................. | The Court | Fine not exceeding 50 Rupees, commutable if not paid to imprisonment not exceeding one month ......... ...... | .... | VII | XIII | 1832 | 24 | |
| **PROVISIONS.** <br> Unwholesome, Sale of | | | | | | | | |
| Petty cases of—See "Petty offences." | | | | | | | | |
| More serious cases .... ................ | C. C. | D. M. L. Imprisonment not exceeding 6 months, and fine not exceeding Rs. 200, commutable if not paid, to further imprisonment not exceeding 6 months. | .... | ,, | X | 1816 | 99 | See on this subject Proceedings of F. U. 19th Jan. 1847. |
| **PRISONERS.** | | | | | | | | |
| Offences by—See "Escape." | | | | | | | | |
| Ditto, by Convicts under sentence of imprisonment for life, not intended, or known to be likely to cause death of any party ...................... | S. C. | Death, or transportation for life, or stripes not exceeding 195 ............ | .... | I | XVIII | 1835 | 47 | These sentences are subject to confirmation by the Foujdaree Udalut. |
| Other offences by, after being once previously punished by officer in charge of Jail ................................ | ,, | Transportation for life, or stripes not exceeding 195........................ | .... | II | ,, | ,, | ,, | |
| **POST OFFICE.** <br> Offences against laws relative thereto. | | | | | | | | |
| Persons, otherwise than under the authority of Government, conveying, receiving, or delivering letters or packets, or being accessary to such acts.. | M. or J. P. | Fine not exceeding Rupees 50,........ | .... | V | XVII | 1837 | 93 | |

| CRIME. | By whom cognizable. | Punishment. | Law. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| POST OFFICE—(continued.) Offences against laws relative thereto. | | | | | | | | |
| Sending any packet of Law papers, Vouchers, &c. by, with a knowledge that it contains any writing not necessarily part of the documents, which such packet is stated to contain by attestation on cover .................. | M. or J. P. | Fine not exceeding Rupees 50.......... | .... | IX | XVII | 1837 | 92 | |
| Sending any packets of Newspapers, or other printed papers, with a knowledge that they contain any writing other than the direction on the cover. | " | Ditto. | .... | X | " | " | " | |
| Commanders of Vessels wilfully disobeying the rules for observance, on arrival by sea at any Post Office Station.............................. | " | Fine not exceeding 1000 Rupees........ | .... | XVI | " | " | 93 | |
| Commanders of Vessels refusing to receive the letters and packets which he is required to receive from any Officer of the Post Office Department. | " | Ditto. | .... | XX | " | " | " | Prosecution under the above provisions of Act XVII of 1837, can be instituted only by the Post Master General, or a Post Master. |
| Persons employed in the Post Office Department, fraudulently appropriating letters or packets, or any thing contained therein, or opening any letter, packet or banghy box with such intention........ ........ ............ | S. C. | Imprisonment with or without hard labour for a term not exceeding 7 years, and fine...... .......................... | .... | XXXIII | " | " | 48 | |
| Fraudulently appropriating money received for postage duty .............. | M. | Imprisonment with or without hard labour for a term not exceeding 2 years, and fine.............................. | .... | XXXIV | " | " | 93 | |
| Fraudulently putting any wrong mark on any letter or packet, or altering or causing to disappear any mark which is thereon .............. ...... ...... | " | Ditto. | .... | XXXV | " | " | " | |
| Fraudulently preparing documents incorrectly, or altering, secreting, or destroying them .... .............. | " | Ditto. | .... | XXXVI | " | " | " | |
| Putting any letter or packet into the wallets of the Post Office, with a view to defraud Government of the postage duty .... ............... .......... | " | Ditto. | .... | XXXVII | " | " | 94 | |
| Wilfully certifying, or causing to be certified, by writing on any letter, cover or packet, what is not true in respect to such letter or packet .............. | " | Fine not exceeding 50 Rupees, commutable if not paid to imprisonment not exceeding two months.............. | .... | V--VIII | XX | 1838 | " | |

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| RAPE.................................... | S. C. | Death under the Mahomedan law.—By practice under Regulations, imprisonment not exceeding 7 years, and stripes not exceeding 195.................. | 7 | II | XV | 1803 | 36 | On conviction for "Rape" Session Judges are prohibited from passing sentence, and must refer the trial to the F. U. under Cl. 3, Sec. III, Reg. I of 1818, which Court either adopts the sentence prescribed in Cl. 7, Sec. II, Reg. XV of 1803, or any other it may deem proper, not extending to capital punishment, under Cl. 3, Sec. VII, Reg. XV of 1803. The most severe punishment for which a precedent can be found, is transportation for life. |
| RECEIVING STOLEN PROPERTY. Receiving or buying stolen goods knowing the same to have been stolen, or possessing property obtained by theft or robbery, and knowing at a period of time, subsequent to the possession, that it had been so obtained, without restoring it to the owner, or giving information to the local Police Officer or Magistrate.............................. | C.C. | Imprisonment with hard labor for not more than two years, with or without stripes not exceeding 150.............. | 4 | IV | VI | 1822 | 122 | |
| Purchasing stolen property knowing at the time that the same had been obtained in the perpetration of robbery by open violence, or of theft attended with aggravating circumstances......... | S. C. | Imprisonment for not more than fourteen years, with or without stripes not exceeding 195.............................. | 2 | " | " | " | " | |
| Though the property may not have been so obtained, but simply by theft, if the receiver be a person before convicted of the offence of buying or receiving stolen property, or of any heinous crime, or shall appear to be an habitual receiver of stolen property, or a person of notoriously bad character .. | " | Ditto | 3 | " | " | " | " | |
| Purchasing, receiving or altering the appearance of stolen property offered under suspicious circumstances, without giving information to the Head of the Village or other Police Officer.... | C. C. | Imprisonment not exceeding two years. | .... | IX | XIII | 1832 | 123 | |
| RECORD. Stealing, obliterating, injuring, or destroying, those of any Court or tribunal, European or Native, Civil or Criminal .................................. | S. C. | Imprisonment with hard labor not exceeding 7 years, and stripes not exceeding 100.............................. | 1 | II | VIII | 1829 | 37 | By Cl. 2 of this Section, the Criminal Courts have primary cognizance of these offences, without the intervention of the Magistracy. |
| RESISTANCE. To process of Magistrate. *Petty cases—See "Petty offences."* *More serious cases*...................... | M. | Forfeiture of land, if proprietor—in other cases fine according to circumstances.................................. | .. | XVIII XIX | IX | 1816 | 69 | The fine may be recovered by distraint as in civil process, or with sanction of F. U., may be commuted to imprisonment, or corporal punishment; specific crimes committed in course of such resistance, are liable to be tried and punished by the tribunals which have cognizance of such respectively:—A collector may under Cl. 11, Sec. III, Reg. IX of 1822, call upon the Zillah Judge to inflict like penalties on parties so offending before himself. |
| *By a witness summoned and refusing to attend, or when attending refusing to give evidence, or subscribe his deposition before a Zillah or Criminal Court*.................................. | Offr. presiding | Fine not exceeding 500 Rupees, and committal to close custody until he consent to give his evidence and sign his deposition.................................. | .... | II | I | 1824 | 20 | |

| CRIME. | By whom cognizable. | Punishment. | LAW. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| RESISTANCE—(continued). To Process of Magistrate. By Vagrants in certain cases............ | J. P. | Imprisonment with or without labor not exceeding 3 months.................... | .... | III | XXII | 1840 | 166 | See "Vagrants." |
| RETURNING FROM TRANSPORTATION ................................ | S. C. | Death ......................................... | 2 | IX | XV | 1803 | 16 | The penalty is mitigable by the F. U. |
| RIOT. See "Assembly—Unlawful." | | | | | | | | |
| REBELLION. | S. C. or Special Commission under Act V of 1841. | Death.............................................. | .... | II | I | 1834 | 160 | All trials for this crime are referrible to F. U., and by Sec. III, Reg. I of 1834, that Court is authorized to pass such mitigated sentence as may appear just and necessary; and by Sec. V, Act V of 1841, their sentence must be reported to the Government, and they must wait 3 Calendar months before directing it to be carried into execution. |
| Do. | C. Martial | Ditto. | .... | II, III | VII | 1803 | 161 | |
| ROBBERY—by open violence, *i. e.* Going forth with any offensive weapon, or in a gang, with or without any offensive weapon, with intent to commit robbery, and by force or intimidation robbing, or attempting to rob, any person, in any place whatever; or attacking by open violence, and robbing, or attempting to rob, any dwelling house or any other receptacle of persons or property; or aiding in, or procuring the same. ................................ | S. C. | Imprisonment with hard labor for fourteen years, and stripes not exceeding 195 ...................................... | 3 | IV | XV | 1803 | 41 | This punishment may be increased by the F. U. or mitigated under Cl. 5, Sec. IV, Reg. XV of 1803. |
| If attended by active concern in inflicting any personal injury, torture or cruelty, not occasioning homicide; or in the burning of any dwelling house or houses; or in any other aggravating act; or aiding in or procuring the perpetration of any such aggravated acts. | " | Transportation for life, and stripes not exceeding 195 ........ ............... | 2 | " | " | " | 40 | Trials, in which the prisoners are convicted of these offences, must be referred to the F. U. |
| Leaders of gangs, or other heinous offenders convicted of its repetition, or, without such repetition, of such degree of cruelty and violence, or other aggravating criminality as under the discretion allowed by the Mahomedan Law in cases of Seasut may be punished with death. ................ | " | Death........................................ | " | " | " | " | " | |

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| Committing, or causing to be committed, or aiding in the commission of murder, in the perpetration of the said crime.......................... | ,, | Ditto | 1 | ,, | ,, | ,, | ,, | Ditto. |
| Going forth with a gang of robbers to commit robbery, but being apprehended before the commission of it, or before making any violent attempt for the purpose........................ | ,, | Imprisonment with hard labor for not more than seven years...... .. ...... | 4 | ,, | ,, | ,, | 41 | |
| SALT. | | | | | | | | |
| Petty offences against laws relative thereto................................ | M | Fine not exceeding 50 Rupees, or imprisonment with or without labor not exceeding 30 days.... ..... ....... | .... | ........ | XVII | 1840 | 149 | |
| Manufacturing by Proprietors of land, &c. contrary to provisions of Cl. 1, Sec. VIII, Reg. I of 1805 .... ........ | C. C. | Fine of 3500 Rupees—or in default of payment, imprisonment not exceeding two years.................................. | 1 | IV. | V | 1831 | 152 | By Cl. 5, Sec. III, Reg. V of 1831, primary cognizance of these offences is given to Magistrates and their Assistants to the exclusion of the Native Police. |
| Or connivance at same by same parties contrary to provisions of Sec. XIII, Reg. I of 1805.......................... | ,, | Fine of 25 per cent on value of salt made under such connivance or knowledge. | ,, | ,, | ,, | ,, | ,, | |
| Or illicit sale of—in Malabar and Canara, contrary to provisions of Sec. VII, Reg. II of 1807.......................... | ,, | Fine not exceeding 3500 Rupees.... .... | ,, | ,, | ,, | ,, | ,, | |
| Other breaches of laws relating thereto. | ,, | Fine specifically prescribed if any—otherwise not exceeding 200 Rs., in default of payment imprisonment not exceeding two years.......... ........... | ,, | ,, | ,, | ,, | ,, | These offences are primarily cognizable by the Magistracy, or Native Police as in ordinary criminal cases. |
| Smuggling—or other clandestine or fraudulent transaction regarding.... .. .. | ,, | Fine at discretion, and permanent exclusion from service.................. | .... | XVIII | I | 1805 | 149 | |
| Spontaneous—possessing................ | ,, | Ditto | .... | ,, | ,, | ,, | ,, | This offence was ruled by F. U. to be so punishable, on 20th Dec. 1836, C. R. No. 30, page 13. |
| SHIPS. | | | | | | | | |
| Owners of, selling, lending or disposing of Certificate of Registry, or being accessary to those acts......... ........ | J. P. | Fine not exceeding 10,000 Rupees.. .... | .... | XV | X | 1841 | 166 | |
| Non-delivery of original Certificate to the Registering Officer, on the ship being registered de novo.. .... ...... | ,, | Fine not exceeding 5000 Rupees.... .... | .... | ,, | ,, | ,, | ,, | |
| Non-delivery of Certificate to Registering Officer after purchase or transfer of.. | ,, | Ditto | .... | ,, | ,, | ,, | ,, | |
| Non-delivery of Certificate for registry de novo, on change of Master of..... | ,, | Ditto | .... | XVI | ,, | ,, | ,, | |
| Owners or Masters taking in cargo before the name has been painted, or altering, or otherwise obliterating the, or describing, or being accessary to describing by any other than the registered name, to any Officer, or Officers of Revenue.................. | ,, | Fine not exceeding 10,000 Rupees ...... | .... | XVII | ,, | ,, | ,, | |
| Wilfully detaining, or illegally making use of, a Certificate of Registry declared to have been lost, and as such requiring to be cancelled ... ........ | ,, | Fine not exceeding 5,000 Rupees....... | .... | XIX | ,, | ,, | ,, | |

| CRIME. | By whom cognizable. | Punishment. | Law. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
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| SHIPS—(continued). Persons receiving, or wilfully detaining and refusing to deliver such Certificate to the Officer of Customs ....... | J. P | Fine not exceeding 1,000 Rupees........ | .... | XX | X | 1841 | 166 | |
| Making use of a Certificate for a—after it ought to have been registered de novo .............................. | „ | Fine not exceeding 5,000 Rupees........ | .... | XXI | „ | „ | „ | |
| Making false declaration, or falsifying the documents of a .................. | „ | Fine not exceeding 10,000 Rupees ..... | .... | XXIII | „ | „ | „ | |
| SMUGGLING. See "Salt," "Tobacco," "Liquor," and "Customs." | | | | | | | | |
| SODOMY. | S. C. | Punishable by death under the Mahomedan Law. Under the Regulations, Imprisonment not exceeding 7 years, and stripes not exceeding 195........ | 7 | II | XV | 1803 | 36 | In cases where this punishment may appear insufficient, any sentence short of capital punishment may be passed by the F. U. under Cl. 3, Sec. VII, Reg. XV of 1803. The highest punishment of which a precedent can be found, is transportation for life. |
| SOLDIERS, Purchasing necessaries from, &c. ...... | C. C. | Fine of 40 Rupees, commutable if not paid to 3 months' imprisonment ...... | .... | „ | XIV | 1832 | 100 | |
| STATE. Crimes against—See "Rebellion." | | | | | | | | |
| STORES. Military, exporting without license. ... | M. | Fine not exceeding 500 Rupees. ........ | ... | I | XVIII | 1811 | 86 | |
| SUBORNATION. See "Perjury" and "Forgery". .... | ......... | ................................ | .... | ........ | ........ | .... | .... | The punishment for Subornation is the same as for Perjury, and is also mitigable by the F. U. under Sec. V, Reg. I of 1825. The prisoner in both instances is liable, if it be thought expedient, to a sentence of banishment from the district during imprisonment under Cl. 3, Sec. VIII, Reg. XV of 1803. |
| SUTTEE. Or burning or burying alive the Widows of Hindoos .......................... Or aiding and abetting in same. ....... | S. C. | Fine or imprisonment, or both. ........ | 2 | IV | I | 1830 | 89 | |
| Proprietors of land, Native Revenue Officers, or Heads of Village, wilfully neglecting, or delaying to report intention of, to nearest Police Station... | M. | Fine not exceeding 200 Rs. and in default of payment, imprisonment not exceeding 6 months .................. | 1 | III | „ | „ | 88 | |
| Using violence or compulsion, or assisting in burning or burying alive a Hindoo Widow while laboring under a state of intoxication, or other cause impeding the exercise of her free will. | S. C. | Death.......................................... | .... | V | „ | „ | 89 | |

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| **THEFT.** | | | | | | | | |
| Petty, from persons or place—see "Petty Offences." | | | | | | | | |
| More serious cases ...... ...... ......... | C. C. or M. | Imprisonment not exceeding 6 months with stripes not exceeding 150 ......... | .... | VII | X | 1816 | 99 | |
| If the amount or value of the property stolen exceed 50 Rupees and be under 300; or if the thief has been before convicted of any heinous offence; or be a Watchman, Guard, or Police Officer, or a servant of the person robbed; or a servant in the house in which the theft may have been committed. .... | C. C. | Imprisonment with hard labor for not more than two years and stripes not exceeding 150 ........... ........... | 4 | III | VI | 1822 | 120 | |
| If the value or amount of the property stolen exceed 300 Rupees, or if the theft be attended with aggravating circumstances ........... | S. C. | Imprisonment with hard labor for not more than 7 years and stripes not exceeding 195 ........ ........... | 7 | II | XV | 1803 | 36 | In this case the M. L. Officer will declare a convict liable to amputation of the wrist as 'Hud,' and the sentence must be commuted under this enactment: stripes may be added, under Sec. II, Reg. VI, 1827: or mitigation recommended if deemed proper under Sec, IV, Reg. 1, 1825. |
| If attended with personal violence to a degree endangering life ........... | " | Imprisonment for not more than 14 years in banishment with or without stripes not exceeding 195 ........... | 4 | " | VI | 1822 | 118 | |
| If attended with attempt to commit murder, or with personal violence to a degree endangering life ........ ...... | " | Transportation for life with or without stripes not exceeding 195...... ...... | 3 | " | " | " | " | These cases must be referred to the F. U. |
| **THUGGEE.** | | | | | | | | |
| Murder by—See "Murder." | | | | | | | | |
| **THUGS.** | | | | | | | | |
| Belonging to gang of. . ...... ...... | " | Imprisonment for life with hard labor. . | ... | I | XXX | 1836 | 37 | |
| **TRESSPASSES.** | | | | | | | | |
| Slight—See "Petty Offences." | | | | | | | | |
| More serious cases........ ........... | C. C. | Imprisonment not exceeding 6 months, and fine not exceeding 200 Rs. commutable if not paid to further imprisonment not exceeding 6 months..... | .... | VII | X | 1816 | 99 | |
| **THREATENING.** | | | | | | | | |
| The Government or its Officers for the purpose of procuring alteration of law. | S. C. | Imprisonment for not less than 3 or more than 10 years...... ........... | ... | IV | III | 1831 | 37 | |
| Or instituting or joining in conspiracy ratified by Oath so to threaten &c.... | " | Ditto. | ... | " | " | " | " | |
| **TOBACCO.** | | | | | | | | |
| Cultivating without license, or greater quantity than allowed by license .... | C.C. | Confiscation, forfeiture of license, and fine to extent of 3 times the value .... | 4 | II | VII | 1811 | 150 | In default of payment, the party may—under Cl. 1, Sec. IV, Reg. V of 1831—be imprisoned, in the Debtor's Jail, or Criminal Jail at discretion, till the fine be paid, provided that the imprisonment in no case exceed two years. |
| Illicit sale, import or transit of ........ | " | Confiscation, and fine to 3 times the value | 2 | VI | " | " | " | Ditto. |
| Aiding in same.. ..................... | " | Fine to extent of 3 times the value.... .. | " | " | " | " | " | Ditto. |

| CRIME. | By whom cognizable. | Punishment. | LAW. Cl. | Section. | Reg. or Act. | Year. | Page. | REMARKS. |
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| **TOBACCO—(continued).** | | | | | | | | |
| Any fraudulent or illicit transaction in respect to. | C. C. | Fine, dismissal from service | 1 | XI | VII | 1811 | 151 | In default of payment, the party may—under Cl. 1, Sec. IV, Reg. V of 1831—be imprisoned, in the Debtor's Jail, or Criminal Jail at discretion, till the fine be paid, provided that the imprisonment in no case exceed two years. In this and other cases where the amount of fine is not specified, it must not exceed Rs. 200. |
| More serious instances, when committed by Government servants | S. C. | Imprisonment with hard labor not exceeding 3 years | 2 | " | " | " | " | They are likewise liable to a prosecution in Civil Court at the suit of Government |
| Smuggling, or aiding in, in gang of 3 or more | " | Ditto | .... | VII | " | " | " | If deserving more severe punishment, it may be inflicted under one of the Clauses of Sec. IV, Reg. XV of 1803, as for like acts of criminality done in prosecution of robbery by open violence. |
| Transporting in excess of Rowanah | C. C. | Confiscation of whole, and fine to 3 times value of excess | .... | IX | " | " | " | |
| **TREASON.** See "Rebellion." | | | | | | | | |
| **TREES—Government.** | | | | | | | | |
| Felling and Stealing | C.C.&M. | Imprisonment not exceeding 6 months and stripes not exceeding 150 | .... | VII | X | 1816 | 99 | This offence has been ruled to be one of "Theft" punishable under the general provisions of the Regulations.—See Pros. F. U. 28th Jan. 1837, in C. R. No. 239, p. 109. |
| **VAGRANTS.** | | | | | | | | |
| Extorting alms by offensive and indecent practices, &c. &c. in Madras or Cochin. | J. P. | Imprisonment not exceeding one month. | .... | I | XXII | 1840 | 166 | |
| Ditto for a second offence | " | Imprisonment not exceeding twice the period assigned for the first offence, and the same term for any subsequent conviction | .. | II | " | " | " | |
| **WOUNDING.** | | | | | | | | |
| Slight | C. C. & M. | D. M. L. Imprisonment not exceeding 6 months, and fine not exceeding Rs. 200, commutable if not paid to further imprisonment not exceeding 6 months. | .... | VII | X | 1816 | 99 | In cases where the above punishment may be considered insufficient, the F. U. may pass any sentence not extending to capital punishment, under Cl. 3, Sec. VII, Reg. XV of 1803. |
| Severe | S. C. | Imprisonment not exceeding 7 years, and stripes not exceeding 195 | 7 | II | XV | 1803 | 36 | |
| Committed maliciously, but not in manner intended | " | Same as if done as intended | 2 | IV | I | 1818 | 28 | |

NOTE.—Fines, &c. imposeable by Civil Courts have not been included in this list of punishments, such as those leviable on non-production of, or error in accounts of Curator, under Sec. XII, Act XIX of 1841.—Contempt of Sudder Udalut under Sec. II, Act. XV of 1835.

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# ACT No. VII. OF 1843.

*An Act for abolishing the Provincial Courts of appeal and Circuit in the Presidency of Fort St. George, and for establishing new Zillah Courts to perform their functions; for establishing Courts constituted according to Regulations I. and II., and Regulations VII. and VIII. of* 1827, *in place of the existing Civil and Criminal Zillah Courts, and for extending the Civil Jurisdiction of such Courts.*

I. It is hereby enacted, that the Governor in Council of Fort Saint George be empowered by an Order in Council to abolish the Provincial Courts of Appeal and Circuit, and the Civil and Criminal Zillah Courts, now existing in that Presidency, and to establish new Zillah Courts to perform the Civil and Criminal functions now performed by the said Provincial Courts, and to replace the existing Civil and Criminal Zillah Courts, by Courts constituted according to Regulations I. and II. of 1827, or Regulations VII. and VIII. of 1827, at his discretion.

II. And it is hereby enacted, that every Zillah Court established under this Act, shall be superintended by one Judge, who shall be styled Civil and Session Judge of the Zillah.

XXVI And it is hereby enacted, that the Judges of the Zillah

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SEC. I. For "order in Council," see *Fort St. George Gazette*, 28th July 1843, No. 1346, p. 617.

XXVI. That is, over all Europeans not British subjects, and Americans, and over the Natives of the country. Sec. XXXI. IX. 1816, and Sec. XLIII. of this Act.

Always of course excepting the limits of the Supreme Court as laid down in Sec. XII. Reg. II. 1802.

The legitimate child of a British father, by a woman of the country is not amenable to the Mofussil Courts—but his illegitimate offspring is so amenable, because illegitimate children are considered as of the same country as their mother.—*Beng. Const.* 978, 806.

A person born in wedlock at Madras, his father being a German and his mother a Scotch woman; was declared by the Advocate General to be a British subject and amenable only to the Supreme Court.—*N. A. R. Vol.* 2, *p.* 111.

If a person be found residing in the Mofussil in such circumstances, as do not almost necessarily designate and prove him to be a British subject, it is for such person to prove his right to decline the jurisdiction of the local Courts. The practice of the Supreme Court in requiring its jurisdiction to be proved by the prosecutor, has been introduced in consequence of the jurisdiction of that Court being expressly confined to particular and specified classes of persons; but in Courts of general jurisdiction, the jurisdiction is to be presumed, and it is incumbent on the party declining it to show his exemption, *i. e.*, they are not limited except by reason of locality, and in them therefore the onus probandi as to his birth rests with the prisoner.—*Opinion of Advocate General, N. A. R. Vol.* 2, *p.* 119.

For definition of "Native Subjects" of the British Government, see Reg. XII. 1832, and Reg. II. 1829.

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Criminal Jurisdiction. Courts established under this Act shall exercise within the limits assigned to those Courts respectively, the same Criminal jurisdiction as is now exercised by the Judges of the Courts of Circuit; and shall be vested with the same authority, and subject to the same rules and restrictions, as far as they are applicable and consistent with this Act.

XXVII. And it is hereby enacted, that the said Judges shall hold permanent Sessions in the said Zillah Courts for the trial of all persons accused of crimes and offences now cognizable by the Courts of Circuit, who shall be committed for trial by the Subordinate Judges, or Principal Sudder Ameens, of the Zillahs respectively.

XXIX. And it is hereby enacted, in modifications of Clauses 1st and 3d, Section IX. Regulation X. of 1816, that if upon a perusal of the depositions given before the Magistrate, or any competent Officer of Police, it shall appear to the Subordinate Judge, or Principal Sudder Ameen, before whom a prisoner is brought charged with a crime or misdemeanor subject to the jurisdiction of the Judge of the Zillah Court of Session, that there is evidence of the prisoner being concerned in the perpetration of the crime or misdemeanor with which he is charged, and if the deponents confirm their depositions on oath before him, it shall be competent to the Subordinate Judge, or Principal Sudder Ameen, without further investigation, to commit the prisoner to take his trial before the Session Judge.

XXX. And it is hereby enacted, that the Session Judge shall commence the trial immediately, and shall take the examination of the prosecutor and of the witnesses for the prosecution, and the defence of the prisoner, and the examinations of the witnesses for the defence, and if more witnesses have been previously summoned and are expected to attend, or if the Session Judge thinks it necessary

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XXIX. See C. Os. 159 and 181. These have been issued subsequent to this enactment, and in direct reference thereto, and as explanatory of the modifications intended to be made by it upon the former practice, but C. Os. 20th July 1829. C. Os. 16th Nov. 1831, and 15th Feb. 1832, must not be lost sight of in connection with the subject of committal; the principles therein laid down as to the power and duty of the committing officer to demand security in certain cases, the procuring of sufficient evidence, and the bad consequences flowing from a committal on defective evidence remain in full force.

XXX. "*Defence.*" The practice of the Bengal Courts does not call upon the prisoner for a defence, unless they consider something to be apparently established against him, of which it is necessary that he should furnish a refutation.—*N. A. R. Vol.* 2, *p.* 454.

If the evidence for the Prosecution be in the opinion of the Session Judge and Mahomedan Law Officer clearly insufficient to prove the charge against the Prisoner, it would be superfluous to proceed with the defence.—*Beng. Const.* 1257.

A Judge cannot decline examining the witnesses of a prisoner, of whatever nature their evidence may be, though he attach no weight to their testimony.—*N. A. R. Vol.* 6, *p.* 12.

If Prisoner objects to examine his own witnesses, on the ground of their having been tampered with by Prosecutor, the Session Judge ought not to examine them.—*Const.* 1203, *N. A. R., Vol.* 5, *p.* 115.

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after the commencement of the trial to call for further evidence, he shall adjourn the proceedings, permitting the prosecutor and witnesses to return to their houses, unless he shall see special cause to detain them in order to their being confronted with the other witnesses whose attendance is expected.

XXXI. And it is hereby enacted, that except in cases in which the Session Judge thinks proper to proceed as authorized in Section XXXII. of this Act, the Mahomedan Law Officer attached to the Zillah Court shall sit with the Session Judge for the trial of persons charged with crimes now cognizable by Courts of Circuit, in like manner and subject to the like Regulations as are now applicable to Law Officers sitting with the Courts of Circuit.

XXXII. *First.*—And it is hereby enacted, that it shall be competent to Session Judges in the trial of Criminal cases, to avail themselves at their discretion of the assistance of respectable Natives, or other persons, in either of the two following ways.

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XXXI. *Law Officers of the Zillah Court.*—Their mode of appointment is laid down in Reg. XI. of 1802, on admission to these criminal functions they make the affirmation prescribed in Sec. VIII. Reg. VII. 1802.

XXXII, In Bengal any person not professing the Mahomedan faith, may challenge this mode of trial as of right.—*Beng. Reg. VI.* 1832, *Sec. 5.*

*Mode of Selecting.*—No power is given to compel attendance, only to invite. There are always officers of respectability attached to the Court, Law Officers, Sudder Ameens, &c., who can be invited to act as Assessors, and who can have no reasonable ground for declining.—*Beng. C. O.* 127 *of Vol.* 2.

An East Indian who by reason of his descent is not a British subject within the meaning of the existing laws, is eligible to be employed as a Juror or Assessor on the trial of a native of India, whether of Hindoo or Mahomedan persuasion, or of persons belonging to the same class as himself.—*Beng, Const.* 1019.

Court Vakeels should not be employed as Jurors or Assessors twice in the same year.—*F. U.* 13*th Aug.* 1846.

"*Verdict.*"—This verdict is to be treated as a 'Futwah,' and the Session Judge on receiving one of "guilty," must—if he concurs—proceed according to the Regulations if the crime be therein specially provided for; and in cases where such specific provision is not made, must consider to what particular punishment the prisoner is liable under the Mahomedan law. Thus if he be convicted of "culpable Homicide"—the Judge knowing him, from futwahs formerly delivered to be liable to "Deyut" will proceed to make the prescribed commutation and pass sentence under Cl. 2, Sec. XV. Reg. VII. 1802, or if of "Theft," to "Hud"—and will proceed under Sec. XXI. of the same Regulation. Sanction for all mitigations being applied for as provided in Reg. I of 1825.—*F. U.* 8*th March* 1847, *quod. v. passim.*

"*Competent to dispose of finally.*"—A Session Court unassisted by a Mahomedan Law Officer, is incompetent to declare that to be a crime which is not so declared by the Regulations. The law professedly administered, is the Mahomedan law amended and modified by the Regulations; where the amendments are applicable there can be no difficulty in disposing of trials, but in the contrary event an expounder of the Mahomedan law is necessary to pronounce whether the act of the Prisoner be punishable or otherwise.—*Beng. C. O.* 55 *Vol.* 3.

A Futwah on any point of Mahomedan law may, if necessary, be required without the attendance of the Law Officer on the trial.—*Beng. C. O.* 180 *of Vol.* 2.

In case of a trial commenced before a Jury, being adjourned, and it being impracticable from death or other cause, to procure the attendance of all the persons composing the Jury, new Jurors should be appointed in the room of those whose attendance cannot be procured and the evidence taken should be read over to them.—*Beng. Const.* 828.

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*Viz.*—By constituting two or more such persons Assessors, or Members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of each of the Assessors shall be given separately, and discussed, and if any of the Assessors, or the authority presiding in the Court, desire it, the opinions of the Assessors shall be recorded in writing.

Or by employing them more nearly as a Jury. They will then attend during the trial, will suggest, as it proceeds, such points of enquiry as occur to them, (the Court, if no objection exists, using every endeavour to procure the required information,) and after consultation will deliver in their verdict. The mode of selecting the Jurors, the number to be employed, and the manner in which their verdict shall be delivered, are left to the discretion of the Judge who presides.

*Second.*—Provided, that the Law Officer may be one of the Assessors or Jury.

*Third.*—Provided also, that the decision shall be passed by the Judge according to his own opinion, whether he agrees with the Assessors or Jury, or not, if the case be one which under the existing Regulations it is competent to him to dispose of finally. But if he differs from the Assessors or Jury, his decision shall not be carried into effect unless confirmed by the Court of Foujdaree Udalut to which the case shall be immediately referred.

XXXIII. And it is hereby enacted, that it shall be competent to a single Judge of the Foujdaree Udalut on a revision of the proceedings held on any Criminal trial by any Court of inferior jurisdiction, to reverse or alter the sentence or order passed thereon, provided such reversal or alteration be in favor of the accused, whether for acquittal, mitigation of punishment, or otherwise.

XXXIV. And it is hereby enacted, that if a single Judge of the Foujdaree Udalut on a revision of the proceedings in a trial held by a Session Judge, concur in opinion with the Session Judge, whether for conviction or acquittal, it shall be competent to such single Judge to pass a final sentence, except for capital punishment, which as heretofore shall in cases require the concurrent opinion of two Judges of the Court.

XXXV. And it is hereby enacted, that it shall be competent to the Court of Foujdaree Udalut on a review of the Abstract Statements of Prisoners punished without reference, to mitigate the sentence passed on any prisoner when such sentence may appear on the Session Judge's own shewing of the facts, manifestly illegal or too severe, and it shall not be necessary for the Court to call for the proceedings in such cases, unless they shall see special reasons for so doing. It shall further be competent to the Court

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in like manner to annul the sentence passed in any case when such sentence may be in opposition to any Law or Regulation in force, and to require the Session Judge to pass a new sentence according to Law.

XXXVI. And it is hereby enacted, in modification of Section II. Regulation III. 1833, that the authority to over-rule judgments passed by Sudder Ameens in Criminal cases shall be vested in the Session Judges.

XXXVII. And it is hereby enacted, that Section XXIV. Regulation X. 1816, Clauses 2 and 3, Section IV. Regulation II. 1822, Clause 2, Section V., and Clauses 2 and 4, Section VIII. Regulation VI. 1827, shall be applicable to Session Judges instead of Judges of Circuit.

XXXVIII. And it is hereby enacted, that prosecutions against Magistrates and their Assistants under Section XLIII, Regulation IX. 1816, shall be instituted in the Zillah Courts established under this Act.

XXXIX. *First.*—And it is hereby enacted, in modification of Section III. Regulation XIII. 1832, that it shall be the duty of the Session Judge to bring to the notice of the Foujdaree Udalut any gross misconduct of any Native Officer of Police which may have come under his observation in a case investigated by himself, or which may have been reported to him by a Subordinate Judge, or Principal Sudder Ameen, and which appears to him to deserve the penalty of dismissal, and it shall be competent to the Foujdaree Udalut to order the dismissal of such officer.

*Second.*—Provided, that the Session Judge shall furnish a copy of his Report upon the case to the Magistrate, and the Foujdaree Udalut shall not pass a final order upon it until the answer of the Magistrate, which shall be addressed to that Court, has been received and considered.

XL. And it is hereby enacted, that it shall be the duty of the

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XXXVI. Session Judges need not go into the record of all cases decided by Sudder Ameens. They may do so on petition, or any other cause that may seem to them sufficient.—*F. U.* 15*th March* 1844.

And this authority they should at all times exercise, and it is their (the Session Judges') duty to make the report required by the order of the 29th Nov. 1839, upon the manner in which Sudder Ameens exercise the criminal jurisdiction vested in them.—*F. U.* 18*th Feb.* 1845.

XXXVII. It is a rule of practice with the Court of Nizamut Adalut in the Western Provinces, not to receive petitions from parties calling themselves relations of the Prisoners, without authority from the real appellants. No appeal therefore is considered admissible unless presented by appellant in person, or by duly authorized representative.—*Beng. C. O.* 166 *of Vol.* 3.

XL. He can only "bring to notice"—he cannot direct the *course* to be adopted in consequence.—*F. U.* 4*th Oct.* 1844.

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Session Judge to bring to the notice of the Magistrate any minor neglects, or omissions, or transgressions, of the Subordinate Officers of Police which have come under his own observations, or have been reported to him by a Subordinate Judge, or Principal Sudder Ameen, and such notifications shall be recorded in the periodical returns to the Foujdaree Udalut.

XLI. And it is hereby enacted, that it shall be competent to the Session Judge to report to the Foujdaree Udalut any neglect or delay on the part of the Magistrate, or the Subordinate Officers of the Magistracy, by which the course of justice has been seriously impeded in cases before himself or which have been reported to him by a Subordinate Judge, or Principal Sudder Ameen.

XLII. And it is hereby enacted, that it shall be competent to the Session Judges, Subordinate Judges, and Principal Sudder Ameens, to communicate directly with the District Officers of Police for the purpose of obtaining all the evidence that appears to be forthcoming in cases in which prisoners have been forwarded by them charged with crimes and misdemeanors, Section LV. Regulation XI. 1816, notwithstanding.

XLIII. And it is hereby enacted, that except as provided in Section XLVII. of this Act, Europeans and Americans charged with offences not punishable by the Magistrate, committed within the local jurisdiction of a Principal Sudder Ameen, shall be sent for trial to the Session Judge who shall proceed thereon in conformity with the rules applicable to his own Court, or to Courts constituted according to Regulation II. of 1827, as the case may require.

XLIV. And it is hereby enacted, that in any Zillah, in which the Governor in Council of Fort St. George deems it expedient to establish the Zillah Court, and the Court or Courts under Subordinate Judges, or Principal Sudder Ameens, at separate stations, it shall be competent to the said Governor in Council, by an Order in Council, to authorize the Session Judge to take cognizance of all Criminal cases subject ordinarily to the jurisdiction of the Subordinate Courts, as well as cases subject to his own jurisdiction, which shall be sent to him by the Magistrate or Officers of Police of such Talooks as shall be therein indicated, and to dispose of such cases according to the rules applicable to them respectively.

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XLII. This power is strictly confined to communications for the purpose of obtaining evidence—it does not authorize the notice of neglects, omissions or other errors, in any other way than that prescribed in Sec. XL. by the Magistrate on representation of the Session Judge.—*F. U. 16th Nov.* 1843.

XLIII. *i. e.* if the Criminal Court be presided over by a Principal Sudder Ameen—the committal of the Magistrate must be made to the Session Court—if by a Subordinate Judge—to that Officer in the usual course.

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XLV. And it is hereby enacted, that in any Zillah in which the Governor in Council of Fort St. George deems it unnecessary to establish a Subordinate Civil and Criminal Court, constituted according to Regulations I. and II. or Regulations VII. and VIII. 1827, it shall be competent to the said Governor in Council, by an Order in Council, to authorize the Civil and Session Judge to exercise the Civil and Criminal jurisdiction assigned to such Courts, besides the proper Civil and Criminal jurisdiction of the Zillah Court, and to take cognizance immediately of Criminal cases, within his proper jurisdiction as Session Judge, as they are sent up by the Police and Magistracy.

XLVI. And it is hereby enacted, that when the said Governor in Council deems it proper to establish in any such Zillah a Court under a Sudder Ameen at a detached station, it shall be competent to the Governor in Council to authorize the Sudder Ameen to receive and dispose of Criminal cases sent to him by the Police and Magistracy of the Division subject to his jurisdiction, for which the punishment prescribed shall not exceed the limitation specified in Section VII. Regulation X. of 1816.

XLVII. And it is hereby enacted, that whenever the Governor in Council of Fort St. George shall establish a Court under a European Principal Sudder Ameen at Cochin, such Principal Sudder Ameen shall exercise within the jurisdiction assigned to him all the powers of a Criminal Court constituted according to Regulation II. of 1827, and also all the powers of a Joint Magistrate.

XLVIII. And it is hereby enacted, that when the Subordinate Criminal Court at the Station of a Zillah Court is constituted according to Regulation VIII. of 1827, the Zillah Jail shall be under the charge of the Session Judge.

XLIX. And it is hereby enacted, that when the Subordinate Criminal Court at the Station of the Zillah Court is constituted according to Regulation II. of 1827, the Zillah Jail shall be under the charge of the Judge of the Subordinate Criminal Court, and the Session Judge shall be vested with authority to visit the Jail, and to pass orders according to Section XXXII. Regulation VII. of 1802, and Section VII. Regulation X. 1832.

LIV. *First.*—And whereas it is deemed expedient to extend the powers vested in Magistrates by Regulation IX. of 1816.

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XLVIII. Warrants for the infliction of capital punishment should in such cases be carried into execution under the personal superintendence of the Session Judge, unless circumstances of an urgent nature prevent his attendance.—*F. U. 3d Nov.* 1843.

LIV. Cases disposed of under this Section to be entered in half yearly statements of crimes and misdemeanors before Police and Magistracy.—*F. U. 10th April* 1844.

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It is hereby enacted, that the Magistrate be authorized to exercise the power vested in Criminal Judges by Section VII. Regulation X. of 1816, concurrently with the Subordinate Criminal Courts.

*Second.*—Provided that in all cases in which Magistrates shall exercise the additional powers hereby vested in them, the form of procedure shall be the same as is required to be observed in the Subordinate Criminal Courts in similar cases, and the same record shall be kept of the trial.

LV. And it is hereby enacted, that in every case in which a Magistrate shall exercise such additional powers an Appeal from his sentence or order may be preferred to the Session Judge within one month, and it shall be competent to the Session Judge upon such an Appeal to annul or alter the sentence or order, provided that he shall not increase the punishment awarded by the Magistrate.

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LV. The F. U. have ruled that Appeals from the sentence of *other* authorities having criminal jurisdiction, must be received whatever period may have elapsed.

Although no person has a right of appeal to the Session Judge after the expiration of one month from the date of a Magistrate's order, yet the Judge is not only competent, but it is his duty to send for any case, in which he may see reason to presume a failure of justice though no appeal has been preferred to him, and without any reference to the source from whence his information is derived.—*Beng. Const.* 437 *and* 986.

The period of appeal is limited merely as it relates to appellants, without respecting the discretionary authority of supervision possessed by the superior Courts.—*N. A. R. Vol.* 2, *p.* 221.

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# FOUJDAREE UDALUT,

## REG. VIII. OF 1802, &c.

*A Regulation for establishing a Foujdaree Udalut, or chief Criminal Court; for the trial of Criminal cases in the last resort.*

IN order that an uniformity of decision may be preserved throughout the several Session Courts; and for the better regulation of whatever relates to criminal cases, and the Police of the country; the following rules have been enacted.

II. The Foujdaree Udalut, or superior Criminal Court, shall be held at Fort St. George.

The Courts of Sudder Udalut and Foujdaree Udalut shall in future consist of a Chief Judge, being a Member of the Council, but not the Governor, nor the Commander-in-Chief; and of three Puisne Judges, to be selected from among the Company's Covenanted Servants.—*Sec.* III, *Reg.* III, 1807.

IV. The Court shall meet once in every week; or as often as the state of the business may require; and a regular diary shall be kept of their proceedings.

The Chief Judge and each of the Puisne Judges of the Court of Foujdaree Udalut, previously to entering upon the duties of their offices, shall make and subscribe the declaration prescribed for the Session Judges by Sec. V, Reg. VII, 1802.—*Sec.* V, *Reg.* IV, 1806.

The Governor in Council is empowered, whenever he may deem it expedient, to appoint additional Judges to the Court of Foujdaree Udalut.—*Sec.* IV, *Reg.* III, 1825.

The Court of Foujdaree Udalut, shall be an open Court. The ordinary sittings of the Court shall be held before the Puisne Judges, of whom the senior shall preside in the absence of the Chief Judge. But the Chief Judge shall attend and preside when two of the Puisne Judges may be prevented from attendance, by indisposition or otherwise, or when a difference of opinion be-

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IV. The practice here prescribed has been modified by Sections XXXIII, XXXIV, XXXV.—*Act* VII, 1843.

*Puisne Judges.*—It is the custom of the Service and even of the Government to speak of the 1st, 2d, and 3d Judges, but no such distinction is made by the law; and the designation would appear to rest solely on the grounds of official convenience. The corresponding provisions of the Bengal Code, XII of 1811, III of 1829, and VI of 1831, direct that the Court shall consist of as many Judges as Government may from time to time deem necessary—and there are no distinctive denominations or official designations of the different Judges.

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tween the Judges, or any special case, or business, may, in his judgment, require it. In the event of a difference of opinion when the three Judges are present in Court, the voices of the majority shall determine the question. But if a difference of opinion should arise when two Judges only are present in Court, the question shall be postponed, for adjudication, until a third Judge can attend. The Judge who may be absent when any such case shall occur, is to be duly advised of the same by the Register of the Court; and the presiding Judge shall instruct the Register to summon a special sitting of the Court, for the adjudication of the question, or order it to be brought forward at the next sitting of the Court, when all the Judges shall be present. Every sentence of the Foujdaree Udalut, shall be signed by the Judges present at the passing of such sentence. All other orders of Court, as well as all process issued from the Foujdaree Udalut, shall be signed or issued by the Register, under such circumstances as are now in force, or may be prescribed by the Court, for his guidance, in conformity to Sec. V, Reg. XII, of 1802.—*Sec.* VII, *Reg.* IV, 1806.

*First.* It shall be competent to a Single Judge of the Court of Foujdaree Udalut to exercise all the powers at present vested in two or more Judges of that Court, under the restrictions contained in the remaining Clauses of this Section.

*Second.* In trials referred to the Court of Foujdaree Udalut which may include one or more prisoners liable to a sentence of death, it shall not be competent to such single Judge to pass sentence.

*Third.* In other trials referred to the Court of Foujdaree Udalut, it shall not be competent to such single Judge, if he do not concur with the Session Judge as to the conviction of a prisoner, to pass sentence.

*Fourth.* It shall not be competent to such single Judge to reverse or alter any order or sentence which may have been passed by one or more Judges of the Court of Foujdaree Udalut.

*Fifth.* It shall not be competent to such single Judge to dispose of any reference made by a Session Judge respecting a trial held by him, if he do not concur in the opinion submitted thereupon by the Session Judge.—*Sec.* V, *Reg.* VIII, 1831.

V. The Court shall have a Register, who shall be styled Register to the Foujdaree Udalut.

VI. The Register, previous to entering upon the execution of the duties of his office, shall make and subscribe before the Foujdaree Udalut, the following declaration:—

"I, A. B., Register to the Court of Foujdaree Udalut, solemnly declare, that I will truly and faithfully perform the duties of

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Register to this Court, according to the best of my knowledge and ability; and that I will not receive, directly or indirectly, any present or nuzzer, either in money, or in effects of any kind, from any party in any suit, or prosecution, to be instituted; or which may be depending, or has been decided therein; nor will I, directly or indirectly, derive any advantage, or emolument whatever from my office, excepting such as the orders of the Governor in Council do, or may authorise."

VII. The Head Cauzy and the two Mufties, previous to entering upon the duties of their offices, and on the 1st of January, and 1st of July in each year, shall make and subscribe declarations; similar to those prescribed for the Law Officers of the Session Courts.

VIII. The Court is empowered and directed to take cognizance of all matters, relating to the administration of justice in criminal cases; and the Police of the country; and to submit to the Governor in Council, such suggestions regarding them, as it may deem advisable.

IX. The sentences of the Court shall be regulated by the Mahomedan law; excepting in cases in which a deviation from it may be expressly authorized by any enactment of the Legislature.

Whereas the dispensing with a Futwa, in cases referred to the Court of Foujdaree Udalut at Madras, will be attended with great convenience; and the Futwa may be dispensed with in that Court, without altering or impairing the authority of the Mahomedan law:—It is, therefore, hereby enacted, that in Trials referred to the said Court of Foujdaree Udalut at Madras, that Court shall not be required to take a Futwa from their Law Officers. Provided always, that nothing in this Act contained shall authorize the said Court to dispense with the Mahomedan Law in any case, which, before the passing of this Act, would have been determinable according to that Law by the said Court.—*Act No.* I *of* 1840.

X. In trials for murder, the distinctions made by the Imaums, Yusuf and Mahomed, and by Huneefah, as to the mode of committing murder, shall not be adhered to, by the Foujdaree Udalut; but the intention of the criminal, either evidently or fairly inferible from the nature and circumstances of the case; and not the manner or instrument of perpetration (except as evidence of the

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X. *Yusuf and Mahomed.*—See note on Sec. XIX, Reg. VII, 1802.

The Court, guided by the record of its accumulated experience, and by the directions contained in this and other parts of the regulations on the subject of Mahomedan law, has now upon it the responsibility of acting in accordance with the provisions of the preceding and succeeding Sections.

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intent) shall constitute the rule for determining the punishment. It is further hereby declared, that wilful homicide by poison, or by drowning; when the intention of poisoning or drowning may be evident, is included in the above rule; and that in all such cases, the Foujdaree Udalut (whatever may be the Mahomedan law on the case) are to sentence the prisoner to suffer death; provided they judge him fully convicted of express murder.

XI. In all cases referred under Section XV, Regulation VII, 1802, to the Foujdaree Udalut, that Court, after considering the whole of the proceedings on the case, are either to require further evidence, if they see occasion; or, to pass such final sentence as may appear consonant to justice, and conformable to the Mahomedan law; with the exceptions and modifications authorised by the regulations.

XIII. The Register, within three days after passing of the final sentence, or sooner if practicable, shall transmit a copy of it under the seal of the Foujdaree Udalut, and attested with his official signature, to the Judge of the Session Court: who is immediately to issue a warrant to the Criminal Judge, to cause the sentence to be carried into execution. The Criminal Judge, upon the receipt of the warrant, shall cause the sentence to be executed without delay; and return the warrant to the Session Court, with an endorsement, attested with his official seal and signature, certifying the manner in which the sentence has been executed. All warrants so returned, are to remain with the Session Court; excepting warrants for the infliction of capital punishment, which are to be forwarded by the Judges to the Foujdaree Udalut.

XIV. Where a criminal who may be sentenced to suffer death, shall appear to the Foujdaree Udalut to be a proper object for mercy, they shall submit his case to the Governor in Council; and, according to the circumstances of it, either recommend a pardon to be granted to him; or such commutation of the punishment, as to the Court may seem proper.

XV. In every case of express murder, wherein the crime may appear to the Court of Foujdaree Udalut to have been fully established against the prisoner; but the prisoner be not liable, under the Mahomedan law, to suffer death by kissaas; solely, on the ground of the prisoner's being father or mother, grandfather or

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XIV. This appears applicable only to cases in which sentence has actually been passed and in which on subsequent consideration it is desired to make any alteration. As the Foujdaree Udalut is the only tribunal competent to pass a sentence of death—the enactment corresponds with Sec. XIV, Reg. VIII, 1803, of the Bengal Code. And in connection therewith, the following construction is important:—The Nizamut Udalut are competent to mitigate a sentence on judicial grounds apparent on the record, and strictly connected with the case and not extraneous. If the ground of mitigation be personal to the prisoner, the prerogative of mercy rests with Government.—*Beng. Const.* 350.

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grandmother; or other ancestor of the slain; or of the heir of the slain; or one of the heirs of the slain, being the child or grand-child, or other descendant of the prisoner; or of the slain having been the slave of the prisoner; or of any other person; or a slave appropriated for the service of the public; or on any similar ground of personal distinction, and exception from the general rules of natural justice; the Court of Foujdaree Udalut, (provided they see no alleviating circumstances in the case,) shall sentence him to suffer death, as if liable to kissaas; or to suffer death by seeasut, as authorized by the Mahomedan law in all cases of express murder, under the discretion vested in the Magistrate, with regard to this principle of punishment, for the ends of public justice.

XVI. It shall not justify any prisoner convicted of wilful homicide, that he or she was desired by the party slain, to put him or her to death; and in the event of the prisoner being convicted of the fact to the satisfaction of the Foujdaree Udalut; and of their seeing no alleviating circumstances in the case, they shall sentence him or her to suffer death, under the Mahomedan law; which in this instance also, although it withholds kissaas, gives a full latitude to the Magistrate in the discretionary punishment of tazeer or seeasut.

XVII. If any person convicted of express murder, be supposed not liable to suffer death, under the Mahomedan law, on the ground of one or more of his accomplices being exempted from kissaas, under any of the circumstances recited in Sections XV, and XVI, or on any similar ground of exemption; the Court of Foujdaree Udalut, shall, notwithstanding, sentence the prisoner to suffer death; if in their judgment he be duly convicted, and there shall appear no alleviating circumstances in the case. And wherever the accomplice in an express murder, though not the principal perpetrator of the murder, shall appear to the Foujdaree Udalut fully convicted, and deserving of death; they are authorized, under the discretion given by the Mahomedan law, in such cases, to sentence the prisoner to suffer death.

XVIII. The Foujdaree Udalut are authorized, under the discretion in this respect allowed by the Mahomedan law, to order any prisoner sentenced to imprisonment for life: to be transported to some place beyond sea; and the Criminal Judges, are to cause a written proclamation to be read, and affixed in their Cutcheries, as well as in the Cutcherries of the Police Officers; notifying,

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XVIII. *Criminal Judges.*—In the original regulation till altered by Sec. XXXIX, Reg. X, 1816, this duty was imposed on the Magistrates, to whom perhaps it would now be held naturally to revert, and advantage might ensue from occasional promulgations of the notice.

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that all persons who may be sentenced to be confined for life, for murder, decoiting, robbing, or plundering, or burning houses or property, or any other crime of a heinous nature, will be liable to transportation to some place beyond sea, by order of the Foujdaree Udalut.

I. Within the Territories subject to the Government of the East India Company, whenever any of the Sudder Courts shall sentence any offender to imprisonment for life, it shall at the same time sentence such offender to transportation beyond sea for life, unless there should be special reasons inducing the Court to think such prisoner not a proper subject for transportation which special reasons the Court is hereby directed to record.

II. Within the said Territories whenever any offender shall have been sentenced in the first instance by a Commissioner of Circuit or Sessions Judge to imprisonment for life, or whenever a Commissioner of Circuit or Sessions Judge shall have recommended that sentence of imprisonment for life be passed upon any offender, it shall be competent to a single Judge of the Sudder Court to sentence such offender, at the same time to transportation beyond sea for life, and such single Judge is hereby directed to sentence such offender at the same time to transportation beyond sea for life unless there should be special reasons inducing him to think such offender not a proper subject for transportation which special reasons he is hereby further directed to record.—*Act* XIV, 1844.

The Court of Foujdaree Udalut shall have authority, at their discretion, to adjudge all persons, sentenced by them to imprisonment, and transportation, for life, to corporal punishment of 195 lashes with a cat-o'-nine tails.—*Cl.* 3, *Sec.* II, *Reg.* I, 1825.

In all instances wherein the prisoner or prisoners shall be liable under the Mahomedan law, to more severe punishments, than under the evidence, and all the circumstances of the case, shall appear to the Foujdaree Udalut to be just and equitable, and the Mahomedan law shall not allow a discretion to the Court in determining the degree of punishment, as it does in all cases of tazeer, the Court of Foujdaree Udalut are hereby empowered to mitigate, or remit the punishment as may appear to them proper.—*Cl.* 2, *Sec.* VI, *Reg.* I, 1825.

XX. In cases of a heinous nature, such as murder; gang-robbery; arson; and the like; wherein the crime may be known to have been committed by several persons, the principal of whom may not have been apprehended or convicted; if, on the representation of the Zillah Magistrates, Criminal, or Session Judges, it shall appear to the Foujdaree Udalut, that an offer of pardon to one, or more of the supposed accessaries, on condition of their making a full disclosure of every circumstance within their knowledge, rela-

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tive to the commission of the crime, and the several persons concerned in it, may lead to the apprehension or conviction of the principal offender or offenders; the Court may authorize such offer of pardon: *Sec. XII, Reg. XIII,* 1832, and, on the condition of it being fulfilled, the Court of Foujdaree Udalut are to confirm it by a written certificate, or testimonial, under the signature of their Register, and the seal of the Court; to be delivered to the party, or parties, for his, or their security; as far as regards the act, or acts therein referred to.

XXI. The Session and Criminal Judges, and the several Zillah Magistrates, are to report to the Foujdaree Udalut, whenever it may appear to them expedient to tender an offer of pardon, for the purpose stated in the foregoing section; communicating at the same time, all the information they may possess respecting the circumstances of the case; as well as the measures taken to apprehend or convict the offenders, for whose apprehension or conviction, the proposed pardon may be recommended.

XXIII. All guards of whatever description, having had in charge convicts who may have escaped, and who may appear on the Magistrate's enquiry to have been guilty of wilful neglect; are to be immediately dismissed from the public service; and should any connivance or further criminality appear against them, are to be committed or held to bail, according to the circumstances of the case, for trial before the Session Court; that, on conviction, they may receive the punishment which the law directs.

*First.* Provision is made, by Section XXIII, Regulation VIII, 1802, for the punishment of guards, in charge of convicts who may have escaped; and in certain cases, for committing or holding such guards to bail, for trial before the Session Court. This provision is extended to guards having had charge of prisoners who may have escaped from their custody, whether before, or after conviction; but shall not be considered applicable to Military guards, from any Provincial battalion, (subject to Military law) or from any regular corps of the Army. Whenever it shall appear to a Magistrate, that a guard, furnished by a Provincial battalion, or by any regular corps of the Army, has been guilty of wilful neglect in guarding the prisoners under his charge; or in conniving at the escape, or the attempt to escape, of any prisoner; or of any other act of a criminal nature in the discharge of his duty, the Magistrate shall cause the offender to be delivered over to the Officer commanding the Provincial battalion, or the detachment, to which he may belong, with a charge in writing, that he may be tried, and punished, on conviction, by a Court Martial.

*Second.* The mode of proceeding against Military guards, directed in the preceding clause, shall be observed, with respect to

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any other offence, involving a breach of military duty, and properly cognizable by Courts Martial; but shall not be held applicable to any criminal charge against such guards, or other sepoys, whether belonging to any Provincial battalion, or a regular corps of the Army, which may not involve a breach of military duty, and the cognizance of which may therefore appertain to the Civil Courts.—*Sec.* VII, *Reg.* I, 1810.

XXIV. In cases of disobedience, neglect, or false return, by a Criminal Judge, to any process, rule, or order, of a Session Court, the Session Courts are directed to make the same reports to the Court of Foujdaree Udalut, as the Civil Courts are required to make to the Sudder Udalut; by Section XV, Regulation IV, 1802. The Court of Foujdaree Udalut is further authorized, and directed to proceed upon reports from the Session Courts, of neglect; or misconduct, by the Criminal Judges, made in pursuance of Section XXX, Regulation VII, of 1802; in the same manner, as the Court of Sudder Udalut, is authorized and directed by Section XXXIX, Regulation V, 1802, to proceed upon similar reports to that Court, of neglect or misconduct, on the part of the Judges of the Civil and Subordinate Courts; and in all cases wherein a Covenanted servant of the Company, employed in any of the Criminal Courts, or in any office of Police, may appear to the Foujdaree Udalut to have been guilty of neglect of duty, or of other misconduct, not expressly provided for by the regulations; that Court is either to report the same to the Governor in Council, or to advise and admonish the party, as the case may require, under the provisions contained in Section XXXIX, Regulation V, 1802; the whole of which is declared applicable to such cases.

It is hereby enacted, that petitions on unstampt paper shall be received by the Criminal Judges, the Session Courts, and the Court of Foujdaree Udalut.—*Sec.* IX, *Reg.* II, 1822.

The Court of Foujdaree Udalut, subject to the orders of Government, shall, from time to time, as circumstances require, prescribe the forms, and fix the periods, for the transmission of all Reports, Calendars, Registers or other Statements, to be furnished by the Criminal Courts, European or Native, under this Presidency.—*Sec.* III, *Reg.* IX, 1828.

In acts generally applicable to all the Presidencies, the terms "Sudder Court" shall be deemed applicable to the Courts respectively of the highest Civil and Criminal jurisdiction, as the case may be of all the Presidencies.—*Act* VIII, 1842.

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XXIV. *Same report.*—That is to state the facts of the case. For *course* of procedure when it may be deemed necessary to make such report to Government, see Act XIII, 1843.

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# SESSION COURTS,

REG. VII. OF 1802, &c.

*A Regulation for the establishment of Courts, for the trial of persons charged with crimes.*

V. SESSION Judges, previous to entering upon the execution of the duties of their office; are to make and subscribe the following declaration, before the Governor in Council, or such person as he may commission to administer it:

"I, A. B. solemnly declare, that I will truly and faithfully execute the duties of Session Judge of the Zillah of , that I will administer justice according to the regulations that have been, or may be, enacted by the Legislature; to the best of my ability, knowledge, and judgment; without fear, favor, promise, or hope of reward; and that I will not receive directly, or indirectly any present, or nuzzer, either in money or in effects of any kind, from any party, in any suit or prosecution, or from any person whomsoever, on account of any suit or prosecution to be instituted; or which may be depending, or has been decided, in the Session Court, of which I am Judge; nor will I knowingly permit any person, or persons under my authority, or in my immediate service, to receive directly, or indirectly any present, or nuzzer, either in money or in effects of any kind, from any party, in any suit or prosecution; or from any person whomsoever, on account of any suit or prosecution, to be instituted, or which may be depending, or has been decided in the said Court; nor will I directly or indirectly, derive any advantage or emolument from my station, excepting such as the orders of Government do or may authorize."

VII. The Mahomedan Law Officers of the Zillah Courts, shall also be Mahomedan Law Officers of the Session Courts, in the several Zillahs; and shall not be removable, except on proof, to the satisfaction of the Sudder Udalut, that they are incapable; or

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V. - Oaths were originally required, but were dispensed with by Act XXI, 1837, *which see in Reg.* VI, 1811.

The prescribed declaration may be made, before any Court of Record or Justice of the Peace. The Judges of the Courts or Justices of the Peace before whom they may under this authority be subscribed and recorded, will notify the same by letter to the Secretary to Government on the same day.—*G. O. 26th February* 1841.

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have been guilty of misconduct in the performance of their public duty, or of any act of flagrant profligacy in their private conduct.

VIII. The Mahomedan Law Officers of the Session Courts, previous to entering upon the execution of the duties of their offices, are to make and subscribe the following solemn affirmation, before the Session Court, to which they may be respectively attached.

"I, A. B. Mahomedan Law Officer of the Session Court for the Zillah of                    , solemnly affirm, that I will truly and faithfully perform the duties of Mahomedan Law Officer of the Court, according to the best of my knowledge and ability; and that I will not receive directly or indirectly, any present or nuzzer, either in money, or in effects of any kind, from any party in any suit or prosecution, to be instituted, or which may be depending, or has been decided in the Session Court, of which I am Mahomedan Law Officer; nor will I, directly or indirectly, derive any advantage, or emolument, from my office, excepting such as the orders of government do or may authorize."

IX. At the expiration of every six months, that is, on the 1st of January, and the 1st of July in each year, the Mahomedan Law Officers of the Session Courts, shall make and subscribe the following solemn affirmation.

"I, A. B., Mahomedan Law Officer of the Session Court for the Zillah of            , solemnly affirm that from the 1st of January, to the 30th June last; (or, from the 1st July, to the 31st December last), I have truly and faithfully executed the duties of Mahomedan Law Officer of this Court, according to the best of my knowledge, and ability; and that I have not received, directly, or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit, or prosecution, which has been, or is to be instituted, or is depending, or has been decided in the Session Court, of which I am Mahomedan Law Officer; nor have I, directly, or indirectly, derived any advantage or emolument from any office, excepting such as the orders of government have authorised me to receive.

X. The Sheristadars, and the other Native Officers of the Zillah Courts, shall be Sheristadars and Officers of the Session Courts of the Zillahs to which they are respectively attached.

XV. *First.* The proceedings on the trial of prisoners are to be conducted in the following manner. The charge against the prisoner, his confession (which is always to be received with circumspection and tenderness) if he plead guilty; or, if he plead

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IX. This seems now to be generally neglected in practice.

XV. *Clause* 1*st. Expressly directed not, &c.*—These are cases "liable to sentence of death," or in which "the futwah is disapproved" or cases of Rape.

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not guilty, the evidence on the part of the prosecutor; the prisoner's defence, and any evidence which he may have to adduce, being all heard before him, the Mahomedan Law Officer (who is to be present during the whole of the trial) is to write at the end of the record of the proceedings, the futwah, or law; as applicable to the circumstances of the case; and to attest it with his seal and signature. The Court shall attentively consider such futwah; and if it shall appear consonant to natural justice; and also conformable to the Mahomedan law; they are to pass sentence in the terms of the futwah (except in cases in which they are expressly directed not to pass sentence), and to issue their warrant to the Criminal Judge for the execution of it, without further reference, or delay. Provided however, that in all cases where a prisoner may be liable to suffer death; or imprisonment for life; the Court shall transmit translates in English, of all the papers, and proceedings, read or recorded during the trial, to the Foujdaree Udalut, and shall wait the final sentence of that Court.

*Second.* In trials for murder before the Session Courts, after the proceedings shall have been concluded in the manner above prescribed; the Law Officer of the Court, who may be present during the trial, shall be required by the Judge, to declare whether the prisoner is convicted of the charges against him; and shall subscribe his answer on the record of the Court's proceedings. If the Law Officer shall declare the prisoner to be not guilty, the Judge shall pass an immediate sentence of acquittal, and order him to be discharged; unless he shall see cause to disapprove such opinion, in which case he is to refer the proceedings on the trial for the sentence of the Foujdaree Udalut. If the answer of the Law Officer shall declare the prisoner to be convicted of express murder (Kutl-amd); the Judge without making any reference to the heir, or heirs of the slain, shall require the Law Officer to declare the punishment, to which the prisoner convicted would be liable according to the Mahomedan law; supposing all the heirs of the slain entitled to prosecute the prisoner for kissaas, to have attended and prosecuted him; at an age competent to demand kissaas, and to have demanded kissaas. The futwah of the Law Officer upon this reference, shall be also subscribed on the record of the Court's proceedings; and whether the futwah declare the prisoner liable to suffer death, (as must be the case in most instances of conviction of express murder, under the supposed demand of kissaas, by the heirs of the slain,) or whether it declare the prisoner not liable to capital punishment, from the heirs of

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*Clause 2d. Sentence of acquittal.*—The F. U. have no power to overrule an acquittal by a Session Court.—*F. U. 24th July* 1837.—*C. R.* 795, *p.* 396.

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the slain not being legally entitled to demand kissaas, or the failure of retaliation from the parties standing in the relation of parent and child, or master and slave, or otherwise; the Judge is, in either case, to refer the proceedings for the sentence of the Foujdaree Udalut; should the answer of the Law Officer to the first reference, acquit the prisoner of express murder, but convict him of homicide of any one of the four denominations distinguished in the Mahomedan law, (viz., shibeh-amd; kutl-khota; kutl-kayeem-mokam-ba-khota; and kutl-ba-subbub,) the Law Officer is to declare the prescribed penalty for the same, according to the Mahomedan law: and if his futwah should declare the deyut, or price of blood, to be the whole, or part, of the legal punishment; the Session Court is to commute the fine to imprisonment, for such period as it may consider adequate to the offence; and its sentences in such instances, are to be carried into execution, without reference to the Foujdaree Udalut, if for temporary imprisonment; or referred to that Court, if for imprisonment for life; subject to the general provision contained in Section XXII, for referring to the Foujdaree Udalut all trials, whereon the Session Courts may disapprove of the futwahs of their Law Officers.

XVI. The prosecutor is to be allowed the option of carrying on the prosecution in person; or by a vakeel duly appointed; except in cases in which the Mahomedan law requires the prosecutor to appear in person at the trial of the prisoners. This rule however is not meant to prohibit the Judges causing prosecutors to attend in person, in every case in which their vivâ voce evidence shall be deemed necessary; provided they be not Mahomedan or Hindoo women of a rank and situation in life, which, according to the customs and prejudices of the country, would render it improper to compel them to appear in a court of justice. If the prosecutors or witnesses on a trial shall be women of this description, and their evidence shall be deemed necessary, and the case shall be of such a nature as to admit of its being taken by commission; the Judges shall not require the attendance of such women, but shall depute persons to take their evidence in the manner prescribed by the Mahomedan law.

Such parts of Section VII, Regulation III, 1802, as prescribe to the Civil Courts the rules for procuring the attendance and evidence of witnesses, and for administering oaths, or taking declarations equivalent to, and in lieu of, such oaths; and likewise for inflicting punishments on persons who, being duly summoned, refuse to attend, or, when attending, refuse to give evidence, are hereby extended to the cases of witnesses whose attendance and evidence may be required by any Zillah Magistrate or Criminal

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Judge, or the Session Courts, in any criminal trials or matters cognizable by them respectively.—*Sec.* II, *Reg.* I, 1824.

No person shall, by reason of any conviction for any offence whatever, be incompetent to be a witness in any stage of any cause, Civil or Criminal, before any Court in the Territories of the East India Company.—*Act* XIX, 1837.

XVII. If the attendance of any witness on the part of the prosecutor, or the prisoner, whose evidence the law may not allow to be taken by commission, cannot be procured; or if any witness cannot be found, the Judges may postpone the trial; provided, there shall appear to them sufficient cause for so doing. But if the Judges and their Law Officers shall be of opinion, that the evidence of any witness, or witnesses, who may be absent, is not necessary; they shall complete the trial, without the evidence of such witness or witnesses.

XVIII. *First.* All examinations of parties, and witnesses, are to be taken down in the language, and character in which the person examined, may desire to have the same recorded; and such person, whether party or witness, is to be allowed to read the same when finished; or, if unable to read, it is to be read to him; after which, if he admit the record to be correct, he is to affix his name, or mark to it; and the Judge, Magistrate, or other officer, before whom such examination may have been taken, is to certify the same under his official signature on the original record.

*Second.* In the examination of witnesses, leading questions, suggesting a particular answer, or having a direct tendency to such suggestion, are to be carefully avoided; and the interrogatories to them, are to be proposed in such general terms, as may bring forth all the information they possess, and lead to a discovery of the truth. With this view, the parties are to be allowed to cross-examine the witnesses; and the Judge or Criminal Judge shall also cross-examine them, when necessary for the same purpose.

*Third.* Examinations of the parties and witnesses, besides the name of the person examined, are to specify the name of his, or her father; and, if a married woman, the name of her husband; also the religion, cast, profession, and age of the party or witness; and the village and purgunnah in which they reside.

*Fourth.* When any stolen property, or instruments of violence

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XVII. For course of procedure in such cases, *see also Sec.* XXX, *Act* VII *of* 1843. A case should not be laid before a Session Court till ready for trial. The Session Judge would be justified in returning it to the Criminal Court.—*F. U. 27th May* 1837.—*C. R.* 484.

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stated to have been found upon the prisoners, or in their houses, are produced before the Criminal Judge, or Session Court, the prosecutor, and any witness brought to give evidence thereupon, are to be carefully examined, relative to the identity of such property, or instruments recognized by them; and the circumstances of the same having been found upon the prisoners, or in their houses. The principle of this rule is to be further kept in view, in instances of circumstantial evidence.

*Fifth.* With a view to impress upon the witnesses, the necessity of caution and accuracy in delivering their evidence; it shall be the duty of an officer of the Court, to repeat aloud to them, in the language which they best understand; the following admonition, immediately, after they shall have been sworn respectively, viz. "In delivering your evidence under the solemn affirmation "now administered, you are required to declare the truth, the "whole truth, and nothing but the truth. You are carefully to "distinguish, what you personally know as an eye-witness, or other-"wise, from what you may have heard from others; and are so-"lemnly bound to answer all questions put to you on the trial "before the Court; without any regard to the prosecutor or pri-"soner, to the best of your information and belief."

*Sixth.* The Session Courts are to be careful to notice on their proceedings, any material difference between the depositions of the same witnesses as given before them, and the Criminal Judges; and are to question the witnesses thereupon, and record their answers; but the depositions taken before the Criminal Judges, are not to be read before the Session Court, in the presence of the persons who gave the same; until they shall have been re-examined before the Session Court.

XIX. On trials for murder, the law officers shall deliver their futwah, or law opinions, upon the case, according to the doctrines of Yusuf and Mahomed.

XX. No criminal shall suffer the punishment of mutilation.

XXI. Where a prisoner shall be adjudged in conformity to

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XIX. The two great sects of Mahomedans, the Shiahs and Soonies, frequently differ both in interpreting the Koran, and in admitting or rejecting the Traditions; but the authoritative writings of Aboo Huneefah, and his two disciples, Aboo Yusuf, and Imam Mahomed, who were Soonies, govern all judicial decisions in India. If a difference of opinion exists between these authorities, judgment is to be given according to the decision in which the Master and one of his disciples agree, or if both of the disciples dissent from their Master according to that which appears most consonant to reason, or the practice of modern days, or to be founded on the best authority. In judicial decrees, however, the doctrine of Aboo Yusuf is considered more sound than that of his fellow disciple—when no precedent can be found, the Mahomedan Judge is directed to abide by the decisions of subsequent lawyers;—but if these also fail to afford a direct solution of any legal question, it is deemed not improper to resort to judgment, analogy and reason.

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the futwah of the law officers, to lose two limbs; instead of being made to undergo such punishment, he shall be imprisoned, and kept to hard labor for fourteen years: and where a prisoner shall be adjudged to lose one limb; he shall in lieu of such punishment, be imprisoned and kept to hard labor for seven years. The Judges are accordingly directed, whenever any criminal shall be sentenced to suffer mutilation, to commute such punishment for imprisonment, and hard labor for the term above prescribed; and to issue their warrant to the Criminal Judge for that purpose.

The Session Courts, and Court of Foujdaree Udalut, are hereby authorised to proceed in the mode prescribed by Clauses 2 and 3, Sec. III, Reg. I, of 1825, *(incorporated with Clause* 5, *Sec. IV, Reg. XV*, 1803, *which see)* in all cases, wherein a futwah awarding amputation may be given by the Law Officer of the Session Court, and the sentence prescribed in Sec. XXI, Reg. VII, of 1802, may be considered by the Session Judge holding the trial, to be too severe.—*Sec.* IV, *Reg.* I, 1825.

XXII. Where the Session Judge shall disapprove of any part of the proceedings held on a trial, or of the futwah delivered by the law officer, they are not to pass sentence in such cases; but shall complete the trial, and transmit to the Foujdaree Udalut, a copy of all the proceedings and the futwah of the Law Officer; with a separate letter, stating the grounds of their disapproval; and wait the sentence of that Court.

XXIII. The Judges of the Session Courts are to refer to the Mahomedan Law Officers of their respective Courts, all questions on points of law that may arise during the course of any trial; and respecting which no specific rules may have been enacted by the Legislature; and shall regulate their proceedings by the opinions which may be so delivered. Where such opinion shall appear to the Judge contrary to the principles of natural justice, or to the Mahomedan law, they are nevertheless (in cases not provided for by the regulations) to be guided by them; and after completing the trial, and obtaining the futwah of the Law Officer upon the case, they shall, without passing sentence upon it, transmit the proceedings and futwah to the Foujdaree Udalut; with a separate letter, stating their objections to such opinions or futwah: and wait the sentence of that Court.

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XXIII. The F. U. point out that a Session Judge can "overrule" by a second question, such objections only as may consist of some of the personal exceptions indicated in Clause I, Section II, Regulation VI, 1829; while the 2d Clause of that Section provides that if, as in the cases above referred to, the Law Officer objects to the conviction of the prisoner on the ground of the insufficiency to conviction of the testimony itself, or on any other ground separate and distinct from the personal exceptions specified in Clause 1st, the trial shall be referred to the Court of Foujdaree Udalut, and a second futwah of course dispensed with.—*F. U. pro.* 8*th April* 1837.—*C. R.* 669.

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In cases, in which the evidence of a witness on a criminal trial before a Session Court may be declared by the Mahomedan Law Officer inadmissible or incompetent, on the ground of the witness's not professing the Mahomedan religion, of his being a Police Officer, or an Officer of Government of any description, or any other ground of exception in the Mahomedan rules of evidence, which may appear to the Session Judge unreasonable and insufficient, the Judge shall cause the examination of the witness to be taken, notwithstanding the exception stated by the Law Officer; and shall require the latter, on completion of the trial, to declare in his futwah, the sentence to which the prisoner would have been liable, if the evidence of the witness or witnesses objected to, had been admissible under the provisions of the Mahomedan law. In such cases, however, if the conviction of the prisoner depend exclusively, or principally, upon the evidence of the witness or witnesses objected to by the Law Officer, the Session Judge shall not pass any sentence; but shall refer the trial to the Court of Foujdaree Udalut, to be disposed of by them under the general Regulations.—*Sec.* VIII, *Reg.* I, 1825.

In modification of Section VIII, Regulation I, 1825, it is hereby enacted that it shall be competent to a Session Judge to pass sentence, without reference to the Court of Foujdaree Udalut, on all persons convicted before him of any crime by law punishable by a Session Judge, notwithstanding any objection taken to the deponents by the Law Officer, provided such objection consists of any of the following personal exceptions to the witnesses or prosecutors—1st, that they are Officers of Police, or in the service of Government, or the persons who took the prisoner into custody; 2dly, that they are persons not of the Mahomedan persuasion; 3dly, that they are prosecutors, or stand in the situation of prosecutors, from having been injured by the prisoner; 4thly, that they are women; 5thly, that they are near relations of the prosecutor; 6thly, that they are masters, servants, or slaves of the prosecutor.

*Second.* But if the Law Officer objects to the conviction of the prisoner, on the ground of the insufficiency to conviction of the testimony itself, or on any other ground separate and distinct from the personal exceptions specified in Clause first, the trial shall be referred to the Court of Foujdaree Udalut, as heretofore.—*Sec.* II, *Reg.* VI, 1829.

The Session Courts, Criminal Judges, and Principal Sudder Ameens, are empowered to impose a fine not exceeding fifty Rupees, commutable if not paid, to imprisonment not exceeding one month, for gross prevarication or for other contempt of Court in open Court, provided however that all sentences passed under this Section by the Session Courts shall be noticed in the remarks in

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the Calendar, and that those passed by the Criminal Courts shall be entered in their periodical reports.—*Sec.* VII, *Reg.* XIII, 1832.

XXVI. In all cases in which the Session Courts are directed not to pass sentence, the Judges are to accompany the record of the trial, ordered to be transmitted to the Foujdaree Udalut, with a letter containing their opinion on the merits of the case.

XXVII. The Session Courts are to transmit to the Foujdaree Udalut, translates in English, of the proceedings on the trial of all prisoners liable to suffer death; or who may in their opinion be deserving of capital punishment; within ten days after the trial is completed: or as much earlier as from the state of business may be practicable.

XXIX. The Session Courts are to report to the Foujdaree Udalut, every instance in which it shall appear to them that the Mahomedan Law Officers of their respective Courts have shown incapacity for their offices; or have been guilty of misconduct in the performance of their duty; or of any acts of profligacy in their private conduct.

XXX. The Session Courts are to report to the Foujdaree Udalut, every instance in which it shall appear to them, that the Criminal Judges have been guilty of neglect or misconduct, in the discharge of their duty. The Courts are also to acquaint the Foujdaree Udalut, whenever the Criminal Judges omit, or refuse to obey their orders.

XXXII. The Session Judges are to visit the Jails; and they are to issue to the Officers in charge thereof, such orders as may appear to them advisable, for the better treatment and accommodation, or security of the prisoners.

XXXIII. The Judges are to submit to the Foujdaree Udalut, such rules as may appear to them calculated for the better regulation of the trials of prisoners, the administration of justice, or the Police of the country.

XXXIV. If any person or persons of the Sutar cast, or of any other cast or persuasion within the Company's provinces, shall hereafter put any person to death, on the ground of his or her being versed in, and practising sorcery, such person or persons, on being convicted of the crime, shall be held guilty of murder, and be invariably punished accordingly: and if any person shall either actually form themselves into an assembly, for the purpose of trying any man or woman on a charge of witchcraft, or on any other charge, or shall cause such assemblies to be held; and any person or persons shall in consequence be put to death; they shall be considered as accomplices in the murder, and be dealt with accordingly.



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XXXV. To facilitate the re-apprehension of convicts sentenced to imprisonment for life, who may make their escape from Jail, all convicts of this description are to have the following particulars inscribed on their foreheads; viz., their name; the crime of which they may have been convicted; the date of the sentence passed against them: and the name of the Zillah by the Court of which it may have been passed. This inscription, is to be made by the process, termed godena; by which the Hindoo women ornament their faces, and which leaves a blue mark that cannot be effaced, without tearing off the skin.

XXXVI. The Session Courts are required by Section XXVII, to transmit to the Foujdaree Udalut, English translates of their proceedings, on the trial of all prisoners liable to suffer death; or who may in their opinion be deserving of capital punishment; within ten days after the trial is completed; or as much earlier as from the state of business may be practicable. They are further directed, in the transmission of trials to the Foujdaree Udalut, to give a preference, as far as practicable, to those trials on which the prisoner or prisoners may be liable to suffer death. The Session Judge before whom the trial may have been held, is in all instances, to examine and attest the translates; and will be held responsible for their accuracy.

XXXVII. The Judges of the Session Courts, are to transmit to the Foujdaree Udalut; a report, containing such observations as they have made, regarding the effect of the present system, for administering the criminal laws, in the prevention and punishment of crimes; as well as respecting the state of Jails; the treatment and employment of the prisoners; and such other matters as they may think deserving the notice of the Court.

XXXVIII. The Session Courts in the transmission of their proceedings to the Foujdaree Udalut, are to be guided by such forms and instructions, as they may receive from that Court.

XXXIX. *First.* No pecuniary compensations, nor sums as damages, shall be adjudged to, or be recoverable by individuals in any criminal prosecution; nor shall any fines be imposed by any Court of Criminal jurisdiction, save and except to the use of Government: and whenever a fine to the use of Government shall be imposed, the Court, which may pass the sentence, shall at the same time, weighing all the circumstances of the case, fix a defi-

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XXXV. For punishment of offences committed by persons under sentence of imprisonment or transportation for life, *see Act* XVIII, 1845, *under Sec.* IX, *Reg.* XV, 1803.

Imprisonment for life always to be with transportation except for special reasons, *see Act* XIV, 1844, *under Sec.* XVIII, *Reg.* VIII, 1802.

XXXVI. A translator is attached to each Session Court for the purpose of making these translates.

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nite period of imprisonment to be held as equivalent to the fine; at the expiration of which the persons convicted shall be discharged, although they should have omitted to pay the fine. The imprisonment awarded by the Session Courts under this Section, as an equivalent for fines imposed by them, shall be temporary in all cases, and not for life; and their sentences shall be executed without reference to the Foujdaree Udalut.

It shall be competent to the Session Judges within the Presidency of Fort St. George in adjudging a sentence of fine, to award such fine, or any part of such fine, in compensation to the party who may have been injured, in like manner as it is competent to Magistrates to award fines under Clause Second, Section XXXIX, Regulation IX, 1816, of the Madras Code.—*Act* XXX, 1845.

*Second.* Whenever the Law Officers of the Session Courts shall declare prisoners liable to deyut, or pecuniary fines of any kind, for any other acts than murder, and the several descriptions of homicide specified in Section XV; the Session Courts shall, at their discretion, commute such deyut, or fines, to imprisonment for such period as they may think adequate to the offence: and their sentences in such instances shall be carried into execution without reference to the Foujdaree Udalut, if for temporary imprisonment: or referred to that Court, if for imprisonment for life; which shall at its discretion confirm the said sentences, or mitigate, or entirely remit the imprisonment awarded.

*Third.* Nothing contained in this Section, shall be construed so as to prohibit the restitution to the lawful owners of stolen property, recovered and produced before the Magistrates, Criminal, or Session Judges: nor to restrict the Criminal Courts from adjudging a reimbursement of costs, actually incurred, upon a prosecution before them, by either of the parties thereto, in particular instances, wherein they may consider such reimbursement just and equitable.

*First.* In trials before the Session Courts for adultery, rape, or any other offence within the provisions of the Mahomedan law for cases of *zena* and *fiál-i-shuneea*, the futwah of the Law Officer of the Session Court before which the trial may be held, shall declare only whether the prisoner be legally convicted, or, if not, whether there be strong grounds of presumption that he is guilty of the crime charged against him.

*Second.* If the futwah so given shall declare the Prisoner legally convicted, or that there is strong presumption of his guilt, the Session Judge, provided he concur in the opinion declared by the futwah, shall either pass sentence against the prisoner or refer the trial for the sentence of the Foujdaree Udalut, according as the

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circumstances of the case shall appear to render it referrible or otherwise, under the Regulations in force.

*Third.* If the prisoner be convicted, either on full legal evidence or on strong presumption, of the heinous crime of rape, the Session Judge shall not pass any sentence, but shall refer the trial for the sentence of the Foujdaree Udalut.

*Fourth.* In cases of adultery it shall be requisite that the charge be made and prosecuted exclusively by the husband against the wife, or by the wife against the husband.—*Sec.* III, *Reg.* I, 1818.

*First.* Any person who may be convicted of having, deliberately and maliciously intended to murder one individual, and of having, in the prosecution of such intention, caused the death of the person whom he had intended to murder, in a manner different from that in which he had intended to cause his death, (as where the instrument of perpetration may pass by the person aimed at and kill him on a rebound), or of having accidentally killed another individual, shall be liable to suffer capital punishment, in like manner as if the act had been committed as originally intended by him. In all such cases the Session Courts, provided they concur in the conviction of the prisoner; shall transmit their proceedings to the Court of Foujdaree Udalut, the Judges of which Court, if they consider the prisoner to be convicted of such murderous intention and subsequent actual homicide, shall consider to what punishment the prisoner would have been liable under the Mahomedan law if the homicide had been committed as intended by the prisoner; and if he would have been liable to suffer death, or if, under the modifications of the Mahomedan law contained in the Regulations, the prisoner be liable to suffer capital punishment, the Court of Foujdaree Udalut shall proceed in the case as prescribed by the Regulations in force.

*Second.* In like manner, any person who may be convicted of having unlawfully and maliciously intended to wound, maim, or otherwise do corporal injury to one individual, and of having in the prosecution of such intention, wounded such individual in a manner different from that in which he had intended to wound him, (as where the instrument may pass by the person aimed at and wound him on a rebound) or of having accidentally wounded, maimed, or otherwise corporally injured another individual, shall be held punishable for the act committed by him with such unlawful and malicious intention, in like manner as if such act had been committed as intended by him. The Law Officers of the Session Courts shall in such cases be required to state the punishment to which the prisoner would have been liable if he had committed the act as intended by him, and the Session Courts shall

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pass sentence accordingly, or refer the trial to the Court of Foujdaree Udalut as the case may be referrible or otherwise, under the general Regulations.

*Third.* In trials referred under the preceding Clause to the Court of Foujdaree Udalut, that Court shall consider to what punishment the prisoner would have been liable under the Mahomedan law, if the act of which he is convicted had been committed as intended by him, and after considering the whole of the circumstances of the case in evidence before them, shall proceed according to the provisions of the general Regulations.

*Fourth.* The provisions contained in Clause Second, Section XV, Regulation VII of 1802, regarding kutl-i-khuta and other cases of accidental homicide, are to be considered to be in force as heretofore with regard to all cases of accidental homicide not coming within the intent and meaning of the first Clause of this Section; provided, however, that the Session Courts shall not adjudge any punishment in any such case of accidental homicide, although the deyut should be declared to be payable under the Mahomedan law, if the homicide shall clearly appear to have been committed by misadventure in the prosecution of a lawful act and without any malignant intention.—*Sec.* IV, *Reg.* I, 1818.

XLI. *First.* The Judges of the Session Courts shall, as soon as possible after the close of any trial referrible to the Foujdaree Udalut, and with no further delay than may be necessary to translate the proceedings held thereupon, transmit to the Court of Foujdaree Udalut, a complete and exact translation of the original record of all proceedings held, and papers received, relative to such trial; with an English letter, stating their opinion on the evidence, and on the guilt or innocence of the prisoners. The record to be so transmitted is to be authenticated by the signature of the Judge, and is to include the whole of the proceedings held before the Session Court, with every examination, exhibit, or material paper of whatever denomination, taken by, or delivered to that Court. The whole of the proceedings and papers received from the Criminal Judge, upon the case referred, are also to be annexed to, and transmitted with, the proceedings of the Session Court: but any variations between the depositions of the witnesses before the Criminal Judge, and Session Court, are to be carefully noticed on the proceedings of the latter, as directed in Clause Sixth, Section XVIII; and any confessions of the prisoners be-

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XLI. *English letter.*—In respect to the nature and contents of this letter, see C.O. 4*th March* 1822, *under Sec.* XV; *and* 24*th December* 1821, 14*th March* 1834, and 31*st July* 1839, *on Sec.* XXVI.

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fore the Criminal Judge, any inquest taken in cases of homicide; or, any other evidence appearing on the proceedings of the Criminal Judge, are to be entered with the necessary proofs, on the proceedings of the Session Court.

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# SESSION COURTS,

## Reg. XV. of 1803, &c.

*A Regulation for determining the punishment to be adjudged by the Criminal Courts of Judicature, in cases wherein a discretion is left by the Mahomedan Law; for defining the crime and punishment of robbery by open violence; and for declaring what convicts shall be hereafter liable to transportation, or to banishment, as well as the punishment of such as may return from transportation, or escape from confinement, during the period of their sentences.*

The Mahomedan Law vests in the Sovereign and his delegates the power of sentencing criminals to suffer discretionary punishment (under the legal denomination of tazeer, acoobut and seeasut) in three cases,—*First*, in the case of offences for which no specific penalty, of hud or kissaas has been provided by the law, being for the most part offences not of a heinous nature, the

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1. This regulation is nearly identical with Reg. LIII of 1803 of the Bengal Code. Its preamble is a valuable exposition—as far as it goes—of the principles of the Mahomedan Law—and points out with much clearness those defects in its practice, which it is the object of the Legislature to remedy.

*Mahomedan Law.*—The principles of penal justice comprised in the Mahomedan Code are classed under three heads. *First.*—Kissaas or retaliation, including deyut or the price of blood. *Second.*—Hudood or prescribed penalties. *Third.*—Tazeer and seeasut, or discretionary correction and punishment. Under the *first* head are included offences against the person, called jenayat, as wounding, homicide, and murder. Under the *second*, robbery, surika-i-kobra; theft, surika-i-soghra; drinking wine, shoorb; adultery, zina; and slander of the same, kuzuf. The *third* head comprises all crimes not expressly falling within the laws of kissaas and hud, as well as such as, though comprehended within the general provisions of those laws, are specially exempted from their operation by some doubt or legal defect. *Shoobah*:—the offences which fall under the heads of kissaas and hud are more defined, and in general specifically provided for, and will be noticed in their proper places; but the principles of tazeer and seeasut are of a more general nature. *Tazeer* in its primitive sense means prohibition or restriction, and is legally defined to be an infliction—*Okoobut*—undetermined by law, on account of the right of God, as well as for the rights of individuals; or, in other words, for the ends of public, as well as private justice; and it is declared to be incurred by any offence whether of word or deed, not subject to a specific legal penalty. *Seeasut*:—literally protection—is a word used to express the exemplary punishment extending even to death, which may be considered necessary to protect the community from atrocious and irreclaimable offenders. Those terms include both objects proposed to be effected by punishment—correction, and discipline; individuals are punished and reformed, others are deterred from committing the like offence, and the well being of the community is improved.

In the case of offences against the community, the evidence of the prosecutor is admissible, or the offender may be brought to trial and punishment without any complaint from the party injured: but the Judge alone is capable of remitting the punishment incurred. But in cases of offences against individuals, the plaintiff must himself or by deputy con-

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punishment of which is left discretionary, below the measure of the specific penalties, for the correction and amendment of the offender.—*Secondly*, for crimes within the specific provisions of hud and kissaas; when the proof of the commission of such crimes may not be such as the law requires for a judgment of the specific penalties, though sufficient to establish a strong presumption of guilt; or although the proof be such as is required for a sentence of hud or kissaas, when such sentence is barred by remission of the claim to retaliation in cases of kissaas, or by any of the special exceptions and scrupulous distinctions, which (under the general denomination of Shoobah) are considered by the prevalent authorities of Mahomedan law to bar a judgment for the specific penalties of that law.—*Thirdly*, for heinous crimes in a high degree injurious to society; and particularly for repeated offences of this description; which for the ends of public justice (as expressed by the term seeasut) may appear to require exemplary punishment beyond the prescribed penalties; and with respect to crimes of this description, an unlimited discretion extending to capital punishment is admitted to have been left by the Mahomedan law, to the sovereign authority of every country in which that law prevails, as well as to its judiciary delegates.—In the adjudication of punishments under the discretion thus allowed by the Mahomedan law, especially in the second of three cases above stated, it has been observed, that the futwahs of the Mahomedan Law Officers of the Criminal Courts are often governed by a consideration of the degree of proof against the party accused; rather than the degree of guilt and criminality of the act, established against him; and the penalties awarded by them in such cases are either adjudged on insufficient proof of guilt, or are inadequate to the heinousness of the offence of which the prisoner is convicted. It is therefore necessary that provision be made for determining the punishment to be adjudged by the Criminal Courts in all cases wherein a discretion is left by the Mahomedan law, as well

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duct the prosecution, and though incompetent to bear testimony in his own cause, is at liberty to forgive the offence. In cases of the latter description, absent witnesses may appoint persons to give evidence for them; or in defect of proof the accused party may be put upon his oath. Tazeer though allowed as a private right, cannot be inflicted without a judicial sentence; and though for the full legal conviction of a Mahomedan, the evidence of witnesses of any other persuasion is not strictly admissible, nor that of women, if the prosecution be of a public nature; yet tazeer and seeasut may in all cases be inflicted upon strong presumption, whether arising from the credible testimony of men, or women, of whatever religion, or from circumstances which warrant a strong presumption of guilt, as well as the confession of the accused; and it is expressly declared that a conviction for tazeer may be founded on the depositions of the prosecutor and one credible male witness, in public cases; or in those of a private nature, upon the testimony of two men, or one man and two women. The punishments which may be awarded upon a conviction for tazeer include private and public reprimand and exposure, (tusheer) a temporary sequestration of property, stripes, imprisonment, and even capital punishment, according to the rank and situation of the offender, or the nature of the offence.

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to guard against the infliction of any punishment without sufficient evidence of guilt; as to maintain the uniform and adequate punishment of offenders when convicted, according to the criminality of the offences established against them.—It is further requisite to define the crime and punishment of robbery by open violence, under the continued prevalence of this atrocious crime, which is frequently attended with murder, or with maiming or other personal injury, as well as with the crime of arson or wilful burning of houses, and other aggravating circumstances; and for the punishment of which the specific provisions of the Mahomedan law, under the distinctions admitted to except offenders from the stated penalties, as well as from a distinction in the received construction of that law, between highway robbery at a distance from any inhabited place, and robberies not committed on or near the highway, or committed in or near any place inhabited, have been found altogether inadequate.—In the case of murder committed by one or more robbers on the highway (kutta-ool-tureek) at a distance from any inhabited place, the whole of the principals and accomplices are subject, by the Mahomedan Law (under its specific provision of hud, or stated punishment by the Right of God, being in other words exemplary punishment inflicted for the prevention of crimes, which is the end of public justice) to a sentence of death: the same punishment in this instance is inflicted on the whole band, in consideration of each of them being aiding and abetting to the others; and this principle is allowed by some of the Mahomedan lawyers, as obviously applicable to all murders and other crimes committed by open violence; and by a number of persons, assisting and supporting each other, whether on the highway remote from, or near to an inhabited place; or within a place inhabited; or in any other place whatever: but according to the prevailing doctrines this provision of the Mahomedan law, as well as the provisions it contains for the punishment of highway robbery without murder, by amputation of two limbs, cannot be applied to murders or robberies, committed in any other place than on or near the highway, at a distance from any place inhabited; and even with respect to these, it is held that the specific punishment is barred by any one of the band of robbers being under age; or a lunatic; or a relation within the prohibited degrees, of the person robbed or murdered; or by the person robbed or murdered not being a fixed resident, under the permanent protection of the Mussulman Government; or with respect to robberies, by one of the robbers having a joint interest in the property plundered; or such property not being considered in legal custody, with respect to any one of the robbers; or lastly, with regard to the separate punishment of each robber, if his share of

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the property taken shall not amount in value to ten dirms; being according to the received calculation of the dirm, somewhat less than three Sicca Rupees.—These distinctions are evidently repugnant to the principles of public and equal justice; and it is highly requisite that provision be made for the more certain and adequate punishment of the heinous crimes of murder and robbery, as well as of robbery with or without any other acts of aggravated criminality, wheresoever the same may be committed. Moreover, the rules at present in force for the transportation of convicts who escape from confinement and are re-apprehended, as well as of other convicts sentenced to short periods of imprisonments, have been found open to objection; and it is judged advisable that none except persons convicted of heinous offences, and sentenced to be imprisoned for life, shall be hereafter transported beyond sea; substituting banishment from the district in which the offenders place of abode may be situated, with hard labour in the public works, for convicts sentenced to limited imprisonment, and in consideration of the nature of their offences deemed proper objects of this mode of punishment.

II. *First.*—In all trials before the Session Courts wherein the Mahomedan Law Officers of those Courts may consider the prisoner liable to discretionary punishment, (tazeer, acoobut, or seeasut;) their futwah shall declare the same generally, with a statement of the grounds on which the prisoner is adjudged subject to discretionary punishment; leaving the measure of punishment, in such cases, to be determined by the Session Judge, before whom the trial may be held; or by the Court of Foujdaree Udalut, under the provisions contained in this or any other regulation.

*Second.*—If the crime, for which the prisoner is declared liable to discretionary punishment in such cases, shall have been specially provided for by any subsisting regulation, denouncing the penalty to be adjudged on proof of the commission of such crime; and the Judge before whom the trial may be held, shall consider the crime to have been established against the prisoner; whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, he shall sentence the prisoner to suffer the punishment for such crime prescribed by the regulations; or, if the case be referable under the regulations for the sentence of the Foujdaree Udalut, shall transmit the trial with his opinion thereupon to that Court.

*Third.*—If the crime for which the prisoner is declared liable to discretionary punishment shall not have been specifically provided for by any regulation denouncing the penalty to be adjudged on

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proof of the commission of it; but be such as would have subjected the prisoner to the specific penalty of hud or kissaas, provided by the Mahomedan law, if he had been convicted by full legal evidence; and the futwah of the Law Officer shall declare him liable to discretionary punishment, in consequence of the evidence not being such as the Mahomedan law requires for a sentence of hud or kissaas, though sufficient to convict the prisoner on strong presumptive proof (ghalib-oo-zun;) the Judge before whom the trial may be held provided he concur in the conviction of the prisoner, shall require the Law Officer to declare, by a second futwah, to what specific punishment (of hud or kissaas) the prisoner would have been liable under the Mahomedan law if he had been convicted by full legal evidence; and shall proceed thereupon to pass sentence according to such second futwah; commuting the punishment if any regulation require it; or if the case be referable for the sentence of the Foujdaree Udalut, shall transmit the trial with his opinion to that Court.

*Fourth.* The Judge before whom the trial may be held shall proceed in like manner as directed in the preceding clause, when the crime of which the prisoner is convicted (whether upon full legal evidence or upon strong presumptive proof) may not have been specifically provided for by any regulation, but would subject the prisoner to the specific penalty of hud or kissaas, provided by the Mahomedan law, if the sentence against him for such penalty were not barred by some special exception, or scrupulous distinction, (shoobah), not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice, in consequence of which bar to adjudgment for the specific penalty, the prisoner is declared liable to discretionary punishment. In such cases the Law Officer is to declare by a second futwah, to what punishment the prisoner would have been liable under the Mahomedan law, for the crime committed by him, if the special exception or distinction by which hud or kissaas is barred in the particular case had not existed; and the Judge is to proceed thereupon as directed in the preceding clause.

*Fifth.* Nothing in this section however shall be construed as authorizing a sentence of discretionary punishment exceeding or equal to the specific punishment prescribed by the Mahomedan law, in cases where such specific penalty is remitted or mitigated by the provisions of the Mahomedan law, in consideration of circumstances which alter the nature and diminish the criminality of the offence; unless such enhanced or equal punishment for the crime in question, shall have been expressly denounced by some Regulation in modification of the Mahomedan law.

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*Sixth.* Nor shall any part of the present Regulation be considered to authorize the infliction of any punishment whatever, upon suspicion only (termed by the Mahomedan lawyers, whum, sheck, Shoobah Zaeefah) when the evidence against the prisoner is undeserving of credit, or the presumption of his guilt arising from credible testimony or circumstantial evidence, is weak, and does not amount to the degree of strong presumption, held sufficient for conviction, recognized as such in the Mahomedan law under the denomination of ghalib-oo-rae, akbeer-oo-rae, and Shoobah-i quvee or shudeed. When the Judge before whom a prisoner may be tried, shall not consider him convicted on such presumptive proof, or on the evidence of credible witnesses, or on his own confession, he shall not sentence the prisoner to suffer any punishment, whatever may be the futwah of the Law Officer. But in cases of strong suspicion, though not amounting to conviction, as well as upon proof of notorious bad character the Session Judge may direct the Criminal Judge to detain the prisoner in custody until he shall give sufficient security for his future good behaviour and appearance when required.

*Seventh.*—If the crime of which a prisoner is convicted and for which he is declared liable to discretionary punishment, shall neither have been specially provided for by any regulation, nor by any stated penalty in the Mahomedan law; and the Judge before whom the trial may be held shall consider the crime to have been established against the prisoner and deserving of punishment, he shall after consulting with the Law Officer, respecting the measure of punishment which under the discretion left by the law, and the whole of the circumstances of the case should be inflicted upon the prisoner, adjudge the prisoner to suffer such punishment as may appear adequate to his guilt and the nature of the offence of which he is convicted, not exceeding corporal punishment of 195 stripes, and imprisonment with hard labour for the term of seven years. If in any instance this degree of punishment appear to the Session Judge insufficient in a case not specifically provided by the Mahomedan law or the regulations, he shall transmit the trial with his sentiments thereupon to the Court of Foujdaree Udalut.

*First.*—If any person shall steal, or shall, for any fraudulent purpose, take from its place of deposit for the time being, or from any person having lawful custody thereof, or shall unlawfully and

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II. *Clause 6th.—Nor on strong suspicion.*—"Tohmut" under which, if the Session Judge concur—prisoner must be released or held to security.—*F. U.* 14*th January* 1835, *V. M.* 9.

*Until.*—The time of detention in default of security must be specified, and not exceed three years.—*Cl.* 1, *Sec.* X, *Reg.* VI, 1827.

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maliciously obliterate, injure, or destroy, any record, pleading, decree, precept, return, process, deposition, or other original document whatever, of or belonging to any European or Native tribunal, of civil or criminal jurisdiction, under this Presidency, every such person shall be liable to trial for the same before the Session Court, and being convicted thereof, shall be liable to be imprisoned, with hard labour in irons, for a period not exceeding seven years, and to lashes with a cat-of-nine tails not exceeding one hundred.

*Second.*—In modification of Section VIII, Regulation X, 1816, the Criminal Judge without the intervention of the Magistracy, shall have primary cognizance of all such charges, whether the same are brought forward by individuals, or by the European or Native Officers superintending the said Courts.—*Sec.* II, *Reg.* VIII, 1829.

Persons twelve or more in number, assembling for riotous or rebellious purposes, or for the purpose of interfering with or obstructing the collection of the revenue and refusing to disperse, when called upon to do so by the local authorities, or re-assembling after having dispersed, shall be liable to be tried by the Session Court; and on conviction shall be sentenced to imprisonment for a period not less than three nor exceeding ten years.

Any persons who shall address threats to the established Government, or threats to any of its agents or of the Officers under it, for the purpose of procuring alteration of the law or rendering it nugatory; or shall institute or join any conspiracy, ratified by any sort of bond, oath or agreement, between individuals to execute the said measures, shall be liable to be tried before the Session Court; and shall on conviction be sentenced to imprisonment for a period not less than three nor more than ten years.—*Sec.* III, IV, *Reg.* III, 1831.

Whoever shall be proved to have belonged, either before or after the passing of this Act, to any gang of Thugs, either within or without the Territories of the East India Company, shall be punished with imprisonment for life with hard labour.

Every person accused of the offence made punishable by this Act, may be tried by any Court which would have been competent to try him if his offence had been committed within the Zillah where that Court sits, any thing to the contrary in any Regulation contained notwithstanding.

No Court shall, on a trial of any person accused of the offence made punishable by this Act, require any futwah from any Law Officer.—*Act No.* XXX *of* 1836.

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Any person charged with murder by Thuggee, or with the offence of having belonged to a gang of Thugs, made punishable by Act No. XXX of 1836, may be committed by any Magistrate or Joint Magistrate within the Territories of the East India Company, for trial before any Criminal Court competent to try such person on such charge.—*Act No.* XVIII *of* 1837.

Any person accused of the offence of murder by Thuggee, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by Thuggee, may be tried by any Court which would have been competent to try him if his offence had been committed within the Zillah where that Court sits, any thing contained in any Regulation or Regulations to the contrary notwithstanding.—*Act No.* XVIII *of* 1839.

Whereas it has been considered necessary to adopt more stringent measures for the conviction of professional Dacoits, who belong to certain Tribes, systematically employed in carrying on their lawless pursuits in different parts of the country, and for this purpose to extend the Provisions of Acts XXX of 1836, XVIII of 1837, and XVIII of 1839, for the prevention of Thuggee, to persons concerned in the perpetration of Dacoity.

It is hereby enacted, that whosoever shall be proved to have belonged either before or after the passing of this Act to any gang of Dacoits, either within or without the Territories of the East India Company, shall be punished with transportation for life, or with imprisonment for any less term with hard labour.

And it is hereby enacted, that any person accused of the offence of Dacoity with or without murder, or of having belonged to a gang of Dacoits, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by Dacoity, may be committed by any Magistrate within the Territories of the East India Company, and may be tried by any Court which would have been competent to try him if his offence had been committed within the Zillah where that Court sits.

And it is hereby enacted, that no Court shall, on trial of the offences specified in this Act, require any futwah from any Law Officer.—*Act* XXIV, 1843.

III. *First.*—Any person or persons, who shall in the day, or in the night, go forth with any offensive weapon, or in any gang with or without any offensive weapon, with the criminal intent of

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III. Burglarious entry with subsequent violence to the extent mentioned in this clause, is provided for by Cl. 2, Sec. V of this regulation; but when such violence is inferior in degree, then the case falls under Cl. 4, Sec. II, Reg. VI, 1822.—*F. U. 29th December* 1836.—*C. R.* 85.

It is hereby declared and enacted, that the word "Thug," when used in any Act heretofore passed by the Council of India, shall be taken to have meant, and to mean, a person who is, or has at any time been, habitually associated with any other, or others for the purpose of committing, by means intended by such person, or known by such person to be likely to cause, the death of any person, the offence of Child-Stealing, or the offence of Robbery not amounting to Dacoity. And that the word "Thuggee," when used in such Acts, shall be taken to have meant and to mean, the offence of committing or attempting any such Child-Stealing, or Robbery, by a Thug. And that the expression "Murder by Thuggee" when used in such Acts shall be taken to have meant, and to mean, Murder when employed as the means of committing such Child-Stealing, or such Robbery by a Thug.—*Act* III, 1848.

(*To face page* 38.)

committing robbery, and shall by force or intimidation, rob or attempt to rob any person or persons, on or near an highway; or on a river, lake or other water; or in or near a city, town, or village, or in any other place whatever; or shall attack by open violence and rob or attempt to rob, any dwelling house or other house or building; or any tent, boat or other receptacle of persons or property, shall be deemed guilty of the crime of robbery by open violence (denominated in the Mahomedan law Suruca-i-Kobra and more commonly Shub-Khonee or Dacoity); and on due conviction thereof whether by free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, shall be adjudged to suffer such of the penalties declared in the next Section, as may be applicable to the case, viz. according as the robbery may be with or without homicide, wounding, maiming, or other personal injuries; or with or without other circumstances of aggravation.

*Second.*—In such cases of robbery by open violence the punishment of the offenders shall not depend upon the amount value, or description of the property plundered, nor shall any of the circumstances noticed in the preamble to this regulation as barring a sentence of hud under the Mahomedan law in cases of highway robbery, nor any other provision in that law, be hereafter allowed to operate against the punishment of persons convicted of highway robbery, or of any robbery by open violence as defined in the preceding clause of this Section; or of murder or other acts of criminality committed in the prosecution of such robbery; or of an intent to rob: provided, as in all other cases of criminal conviction, and punishment, that the party convicted be adult and of sound understanding, so as to render him a proper object of punishment.

*Third.*—In all such cases of conviction of robbery by open violence, or of murder or other criminal acts, done in prosecution of

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*Clause 2.—Adult and of sound understanding.*—A most important rule is here briefly, and somewhat incidentally and vaguely given. By the law of England, infants under the age of discretion are not punished by any criminal prosecution whatever; but the age of discretion is matter of judgment, and may and does vary in particular cases—provided that under seven there can be no discretion, and that above fourteen the idea of non-discretion cannot be entertained as a consequence of age. The Mahomedan law says a person becomes an adult on attaining the age of puberty, or on the completion of his eighteenth year if a boy, or her seventeenth if a girl. This is the opinion of Huneefah. But the two disciples maintain that upon either boy or girl attaining their fifteenth year, they are to be declared adult. Others say that nineteen years are required in a boy. The earliest period of puberty in a boy is held to be twelve, and a girl nine years; when a boy or girl approaches the age of puberty, and they declare themselves adult, their declaration must be credited and they become subject to all the rules affecting adults. "Hedaya" *vol.* 3, *p.* 482. The Law Officers of the Courts appear, however, generally to have considered the age of the party without regard to physical qualifications—which in effect is equivalent to English practice—the principles of which certainly govern the Courts in this respect, as they do also in regard to questions arising upon soundness of understanding—the rules for procedure in which are clearlyl aid down in C. O. 1st June 1829.

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such robbery, or of an intent to rob, if the Law Officer of the Session Court declare the prisoner liable to discretionary punishment, the Judge before whom the trial may be held, is to proceed as directed in Clause Second, Section II of this regulation. If the Law Officer declare the prisoner liable to suffer death under the Mahomedan law, the Judge is to refer the trial to the Court of Foujdaree Udalut, with his opinion as directed by the existing Regulations; or if the Law Officer declare the prisoner liable to amputation of limb under the Mahomedan law, the Judge is either to refer the trial for the sentence of the Foujdaree Udalut, or to commute the punishment and pass sentence against the prisoner in conformity to the ensuing Section; according to the degree of punishment to be adjudged, or any provision in the Regulations, may require a reference of the trial for the sentence of the Foujdaree Udalut, or otherwise.

IV. *First.*—All persons convicted of being the heads or leaders of a gang of robbers by whom a murder may have been committed, or of having been actively concerned in the perpetration of such murder; or of any murder committed in the prosecution of robbery, or an intent to rob, or of having been present, aiding and abetting when such murder was committed; or though not present of having procured and caused by hire, counsel, or command, the perpetration of such murder, in pursuance of a preconcerted plan to commit the same, or to commit robbery; shall be adjudged to suffer death.

*Second.*—All persons convicted of being the heads or leaders of a gang of robbers by whom any person may have been wounded, maimed, burnt or subjected to other personal injury, torture or cruelty, not occasioning homicide, or by whom a dwelling house or houses may have been set on fire, or any other criminal and aggravating act committed in the prosecution of a robbery or intent to rob, as well as persons convicted of having been actively concerned in any of the acts aforesaid, done in prosecution of a robbery or intent to rob; or of having been present, aiding and abetting when any such acts were committed; or though not present, of having procured and caused by hire, counsel, or command, the perpetration of any such acts in pursuance of a preconcerted plan to commit the same or to commit robbery, shall be adjudged to suffer imprisonment and transportation for life: moreover any leaders of gangs, or other heinous offenders convicted of a repetition of the crime described in this clause; or without such repetition, of a degree of cruelty, violence or other aggravating criminality, which under the discretion allowed by the Mahomedan law in cases of seeasut, may be punishable with death, and which may appear to the Court of Foujdaree Udalut to render such heinous

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offenders deserving of capital punishment, shall be liable to a sentence of death.

*Third.*—All persons convicted of being the heads or leaders of a gang of robbers by whom a robbery may have been committed without homicide, and without any personal injury, or other act of aggravation as specified in the preceding clause; or by whom any violent attempt shall have been made to commit such robbery though not effected; as well as persons convicted of having been actively concerned in any such robbery or attempt to rob; or having been present, aiding and abetting at such robbery, or attempt to rob; or though not present, of having procured and caused by hire, counsel, or command, the perpetration of such robbery, or attempt to rob, in pursuance of a preconcerted plan for this purpose; shall be adjudged to suffer imprisonment and hard labour for the period of fourteen years.—The Court of Foujdaree Udalut are further empowered to extend their sentences to imprisonment and transportation for life, upon any leaders of gangs, or other offenders, convicted of a repetition of the crime described in this clause; or without such repetition, if from proof of the notorious bad character of the party convicted, or on consideration of any other circumstance appearing upon the trial to aggravate the guilt of any particular prisoner, and evince the danger of his future depredations, if set at liberty, it shall in the judgment of that Court, be just and necessary to inflict a more severe punishment than imprisonment and labour for the term of fourteen years.

The Session Courts shall have authority, at their discretion, to adjudge all persons, sentenced by them to imprisonment, under the provisions of Clause third, Section IV, Regulation XV, of 1803, to receive corporal punishment, not exceeding 195 lashes with a cat-of-nine tails.—*Cl.* 4, *Sec.* II, *Reg.* I, 1825.

No female shall be sentenced to corporal punishment by stripes, by the Magistrates and their Assistants, by any of the Courts of Criminal Justice, or by any other authority, to whom the power of adjudicating that punishment may be given by any Regulation enacted by this Government.—*Sec.* II, *Reg.* II, 1833.

*Fourth.*—Persons convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose, so as to bring them within the provision contained in the preceding clause, shall be adjudged to suffer imprisonment and hard labour for such period not exceeding seven years, as the circumstances of the case may appear to merit.

*Fifth.*—Provided with respect to all the crimes, and degrees of punishment, specified in the several clauses of this Section, if from

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any extenuating circumstances which may appear on the trial to the Court of Foujdaree Udalut, the stated punishment shall in any particular instance appear too severe, or if on consideration of the number of prisoners convicted of the same crime, and of any discriminative circumstances with respect to one or more of them, the example shall appear sufficient for the ends of justice, without extending the full degree of the prescribed punishment to the whole of the prisoners convicted, it shall be competent to the Court of Foujdaree Udalut, to mitigate the sentence, in such cases, as may be deemed just and expedient.

If it shall appear to the Session Judge, on any trial held under the provisions of Clause third, Section IV, Regulation XV of 1803, and not referable to the Foujdaree Udalut, that the stated punishment is, in any particular instance, too severe; or if, on consideration of the number of prisoners convicted of the same crime, and of any discriminative circumstances with respect to one, or more, of them, the example shall appear sufficient for the ends of justice, without extending the full degree of the prescribed punishment to the whole of the prisoners convicted; the Session Judge shall submit a report of the circumstances of the case, and of the sentence proposed by him to be passed on each convicted prisoner, to the Court of Foujdaree Udalut, accompanied by a statement of the grounds of his opinion, that such mitigation of punishment is proper.

The Court of Foujdaree Udalut shall have authority, on receiving the report, prescribed in Clause second of this Section, to sanction such mitigation of punishment, as may appear to them proper; but, should they not see sufficient grounds for mitigating the prescribed penalty, they are hereby empowered to direct the Session Judge to issue his warrant for carrying into effect the sentence prescribed by law.—*Cls.* 2, 3, *Sec.* III, *Reg.* I, 1825.

V. *First.*—No part of the preceding Section shall be considered applicable to secret theft or larceny, without open violence, (Suruca-i-sogra;) whether accompanied with burglary (Nucub-Zunee,) or simple theft from the person or house unaccompanied with any aggravating circumstances. In such cases the Mahomedan law, with the modifications of it in the existing Regulations, and the rules contained in Section II of this Regulation when the prisoner may be declared liable to discretionary punishment, shall govern the sentences of the Session Courts, as well as of the Foujdaree Udalut in any cases referred to that Court.

It is hereby declared, in explanation of Clause first, Section V, Regulation XV, 1803, that the reference therein made to the Mahomedan law in cases of theft, was not intended, and shall not

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be considered to preclude the Session Courts and the Foujdaree Udalut from adjudging corporal punishment, not exceeding 195 lashes with the cat-of-nine tails, in addition to imprisonment for the term of seven years whenever such punishment, in aggravated cases of theft, may appear just and proper.—*Sec.* II, *Reg.* VI, 1827.

*Second.*—But in the case of a burglarious entry or any entry by night into a dwelling house or other house, or into a tent, boat, or other receptacle of persons and property, for the purpose of committing theft therein, although such entry may have been made in the first instance without any open violence; if any person or persons shall after having entered, be guilty of murdering, wounding, maiming, torturing or otherwise doing personal injury to any person or persons, or of any other criminal act of violence, done in the prosecution of the original intention to commit theft; the parties convicted, as principals or accomplices, of such murder, wounding, maiming or other acts of criminality and violence done in the prosecution of theft, shall be liable to the same punishment as has been declared in the preceding Section, for the same acts of criminality committed in prosecution of robbery by open violence; and the several provisions contained in that Section, as well as in Section III of this Regulation, are accordingly declared equally applicable to the cases herein specified.

VI. *First.*—The Session Courts shall transmit to the Court of Foujdaree Udalut as heretofore, all trials in which the prisoner or prisoners may be convicted and liable to a sentence of perpetual imprisonment, or death; as well as in all cases, wherein the Judges of the Session Courts may disapprove the futwah given by their Law Officers, and may not have been expressly authorized by this, or any other Regulation to pass sentence, notwithstanding such futwah, either for the punishment of the prisoner, or for his acquittal, or discharge, either with or without security.

*Second.*—In trials referable to the Foujdaree Udalut, if the Session Judge disapprove the futwah given by his Law Officer, or if the prisoner or prisoners convicted, or any of the prisoners convicted on the same trial, be liable to a sentence of death, the Judge shall not pass any sentence, (except for the acquittal and discharge of any prisoners not convicted), but shall transmit the trial with his opinion thereupon for the sentence of the Foujdaree Udalut. If the Session Judge concur with his Law Officer in the conviction of the prisoner, or prisoners, and none of them be liable to a sentence of death, the Judge shall pass sentence on the prisoner or prisoners. But such sentences, in all trials referable to the Foujdaree Udalut shall not be deemed final, nor shall any warrant be issued for carrying the same into execution, until they be con-

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firmed by the Court of Foujdaree Udalut—moreover, whenever the trial of a principal in any crime may be referred for the sentence or confirmation of the Foujdaree Udalut, whether under the present, or any other Regulation; and an accomplice in the same crime shall have been brought on trial and convicted at the same time with the principal, the Session Courts shall not carry into execution their sentence upon the accomplice so convicted, but shall wait the confirmation, or final sentence of the Foujdaree Udalut, as well respecting the accomplice as the principal: provided however that this restriction be not understood to prevent the Judges of the Session Courts from directing the release of any prisoners, charged as accomplices, whom they may acquit of such charge, in concurrence with their Law Officer, notwithstanding the reference of the trial of the principal to the Court of Foujdaree Udalut.

*Third.*—Whenever the Judges of the Session Courts may refer to the Court of Foujdaree Udalut the trial of a prisoner or prisoners, whom they may consider proper objects of capital punishment under Clause second of Section IV of this Regulation, or of imprisonment for life under Clause third of that Section, or of a mitigation of punishment under Clause fifth of that Section, or of an extension, mitigation or remission of punishment in any case whatever, they shall be careful to notice the same in their letters, accompanying the trials referred, and shall state at large the grounds of their judgment whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case of the prisoner, whose punishment is proposed to be extended, mitigated, or remitted.

VII. *Third.*—In trials referred to the Foujdaree Udalut under Clause seventh, Section II of this Regulation, viz., when the crime of which the prisoner is convicted and for which he is declared liable to discretionary punishment shall not have been specifically provided for either by the Regulations, or by any stated penalty in the Mahomedan law, the Judges of the Foujdaree Udalut, provided the offence be punishable at discretion under the Mahomedan law, and they shall be satisfied of the conviction of the prisoner; are authorized to pass such sentence upon the prisoner, not extending to capital punishment, as they may deem adequate to the crime of which he is convicted, and consonant to the general

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VI. *Clause* 3.—Recommendation for mitigation of punishment should be inserted in the Calendar, no letter is to be written.

VII. *Clause* 3.—For precedents of practice under this clause, *see Nos.* 835, 836, 839, 840, *in the Civ. Rem. p.* 119, *et seq.*

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principles of justice, on due consideration of all the circumstances of the case. The Court shall at the same time propose to the Governor in Council to fix and declare the specific punishment of any crimes of magnitude, which may be found not to have been specifically provided for either by the Mahomedan law or by the Regulations, and which may appear to call for an express denunciation of the penalty to be incurred by committing the same.

*Fourth.*—The provisions contained in Section III, IV and V of this Regulation, shall govern the sentences of the Court of Foujdaree Udalut in the cases therein specified, and the Judges of the Court are authorized to adjudge the stated punishment, provided that the prisoner or prisoners have been convicted of the crimes, incurring the stated penalties, either on free and voluntary confession, or on the testimony of credible witnesses, or on strong circumstantial evidence (sufficient to establish ghalibzun or violent presumption of GUILT) and provided the Judges of the Foujdaree Udalut shall see no cause to disapprove such conviction of the prisoner or prisoners, or to mitigate, or remit the specified punishment.

*Fifth.*—In cases not incurring capital punishment, where a prisoner may be declared by the futwah of the Law Officer of the Session Court to have been convicted, and the Session Judge, before whom the trial has been held, shall concur in considering the guilt of the prisoner to have been proved, and shall consider the prisoner a proper object of the punishment to which he is liable under the Mahomedan law or the Regulations, and shall pass sentence upon him accordingly (as required in such cases by Clause second of Section VI of this Regulation), and the sentence passed upon him by the Session Judge shall appear to the Foujdaree Udalut to be conformable to the Regulations, it shall be competent to the Judges of the Foujdaree Udalut to confirm the sentence so passed upon the prisoner by the Session Court, and found conformable to the Regulations without a revision of the proceedings held upon the trial, except in cases which for any special reason, or purpose of justice may appear to require it; provided that in all cases wherein the prisoner or prisoners, or any prisoner included in a trial referred to the Foujdaree Udalut, may be liable to capital punishment; as well as all other cases wherein the Session Judge, before whom the trial is held, may not concur in the conviction of the prisoner declared by the futwah of his Law Officer, or may not consider the prisoner, though convicted, a proper object of the punishment to which he is liable by the Mahomedan law and Regulations; or in which the sentence passed by the Session Court may not appear conformable to the Regulations; or in which any special reason or purpose of justice, may appear to re-

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quire a revision of the trial; the Judges of the Foujdaree Udalut shall revise and consider the whole of the proceedings held upon the trial, and shall pass sentence accordingly.

VIII. *Third.*—In the cases of convicts sentenced to confinement for life, whom the Foujdaree Udalut may not consider proper objects of transportation beyond Sea; *(for special reasons recorded under Act* XIV *of* 1814, *which see under Sec.* XVIII, *Reg.* VIII, 1802*)* as well as in all cases of convicts sentenced to imprisonment for a limited period; the Court by whom the sentence is passed, if it deem the same proper, on consideration of the prisoner's offence, may adjudge him to be banished during the period of his sentence from the district in which his place of abode is situated; and to be kept to hard labour on the public roads or other public works, in any other district, to which he may be removed by order of the Foujdaree Udalut.

*Fourth.*—The Criminal Judges on the 1st January and 1st of July of each year, or at any other period when the same may be required by the Foujdaree Udalut shall transmit to that Court, a list of the convicts in their respective jails who may have been sentenced to transportation beyond sea, or to banishment from the district in which the offenders may have resided, under each of the two preceding clauses; specifying in such lists the names, ages, crimes, and sentences, of the several convicts; and in the list of those sentenced to banishment, the district in which they may have usually resided before they were brought to trial.

*Fifth.*—The Court of Foujdaree Udalut is declared competent as heretofore, under the discretion allowed by the Mahomedan law to order the removal of all convicts, under sentence of imprisonment, to any jail or district within the Company's possessions in which it may be thought proper to keep or employ them during the period of their respective sentences, although no specific sentence of banishment may have been passed against them under Clause third of this Section. But no such removal shall take place without the special order of the Court of Foujdaree Udalut.

IX. *Second.*—Any convicts under sentence of transportation for life who may be transported to any place beyond Sea, after the promulgation of this Regulation, and shall escape from such place of transportation, and return without permission, to any part of the Company's territory under the Presidency of Fort St. George, shall, (notice of this penalty being duly made to the convict at the time of passing sentence on him) on conviction thereof to the satisfaction of the Foujdaree Udalut, and if no circumstances appear to that Court to render such convict an object of mercy, be adjudged to suffer death.

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Within the Territories subject to the Government of the East India Company, except within the local limits of the jurisdiction of the Supreme Courts, and except within the settlements in the Straits of Malacca, any convict sentenced to imprisonment for life, or to transportation for life, who does any act with the intention of thereby causing, or with the knowledge, that he or she is likely thereby to cause the death of any person, shall, upon conviction thereof, before the Session Court, subject to confirmation by the Sudder Court, be punished with death, or with transportation for life, or with corporal punishment not exceeding 195 lashes with the cat-of-nine tails, whether such convict does or does not by such act cause the death of any person.

Any such convict as aforesaid who commits any offence whatever, other than the offences mentioned in the preceding Section, or who is guilty of violent or disorderly conduct after having been punished by the order of the Superintendent of the Jail, in which he or she is confined, shall, upon conviction thereof, before the Session Court, subject, if the sentence be transportation for life, to confirmation by the Sudder Court, be punished with transportation for life, or with corporal punishment not exceeding 195 lashes with a cat-of-nine tails.—*Act* XVIII, 1845.

XI. *First.*—In the cases of suspicion or bad character referred to in Clause sixth, Section II of this Regulation, wherein the Session Courts may direct the Criminal Judges to detain prisoners in custody until they give sufficient security for their future good behaviour and appearance, when required; as well as in any similar cases wherein the like directions may be given by the Court of Foujdaree Udalut, if any prisoner shall have remained in confinement for a year, or any longer period, under inability to give the security required; and the execution of a Moochulka (penal engagement) by the prisoner for his future good conduct without security, may on consideration of the circumstances of the case, and the prisoner's behaviour during his confinement, appear to the Criminal Judge sufficient to provide for the object intended, he shall *make an immediate report of the case with his opinion for the orders of the Court which may have required the prisoner to furnish security previously to his release.—Cl.* 2, *Sec.* XI, *Reg.* VI, 1827.

*Second.*—In all cases of such reports being made by the Criminal Judges to the Session Courts, the Judges of the latter are to call the prisoner before them, and to examine the proceedings held upon his trial, as far as may be necessary to ascertain the grounds on which the prisoner may have been required to find security, after which and duly considering the circumstances stated in the Criminal Judge's Report, if they shall concur with the lat-

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ter in opinion that the prisoner ought to be released, on his Moochulka without security, they are to direct the same accordingly.

*Third.*—In the exercise of this discretion, the Criminal Judges and Session Courts will of course give due consideration to the nature of the crime, of which the prisoner may have been convicted or suspected; his general character as far as ascertainable, and the consequent risk to be apprehended from his being released without security for his future good conduct.

Whoever being in the employ of the Government in the Post Office Department, or being in the employ of any person or persons who may contract with the Government to convey letters or packets by Post for hire, shall fraudulently appropriate any letter or packet which may have been entrusted to him, or any thing contained in any such letter or packet, or shall open any such letter or packet, or any banghy box, with the intention of fraudulently appropriating any thing therein contained, shall be punished with imprisonment with or without hard labour for a term not exceeding seven years, and shall also be liable to fine.—*Sec.* XXXIII, *Act* XVII, 1837.

Whoever shall print or publish any such Periodical work as is hereinbefore described, without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published any such Periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction, be punished with fine to an amount not exceeding Five Thousand Rupees, and imprisonment for a term not exceeding two years.—*Sec.* III, *Act* XI, 1835.

Every book or paper printed within the Territories of the East India Company, shall have printed legibly on it, the name of the Printer and of the Publisher, and the place of printing and of publication; and whoever shall print or publish any book or paper otherwise than in conformity with this rule, shall, on conviction, be punished by fine to an amount not exceeding Five Thousand Rupees, and by imprisonment for a term not exceeding two years.—*Sec.* VII, *Act* XI, 1835.

No person shall, within the Territories of the East India Com-

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XXXIII. *Act* XVII, 1837—The other penal clauses of this Act apply to Magistrates, and will be found under that head.

*Act* XI, 1835.—This act does not specify the tribunal, or authority, before which proceedings under it are to be taken, it has been inserted here on the supposition that in the event of its being necessary to act upon it in the Provinces, the Session Court would be held to have cognizance of these offences.

*Rules laid down.*—For the making of a declaration of the name of the printer and publisher before the Magistrate of the jurisdiction, within which such work shall be published.

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pany, keep in his possession any Press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrates of the jurisdiction wherein such Press may be; and whoever shall keep in his possession any such Press without making such a declaration, shall, on conviction, be punished by fine to an amount not exceeding Five Thousand Rupees, and by imprisonment for a term not exceeding two years.

"I, A. B., declare that I have a Press for printing at ———." And this last blank shall be filled up with a true and precise description of the premises where such Press may be.

Any person who shall, in making any declaration under the authority of this Act, knowingly affirm an untruth, shall, on conviction thereof, be punished by fine to an amount not exceeding Five Thousand Rupees, and imprisonment for a term not exceeding two years.—*Sections* VIII, IX, *Act* XI, 1835.

*First.*—Whenever a Session Judge, or the Court of Foujdaree Udalut, under the provisions of Clause 6, Sec. II, Reg. XV of 1803, may require security for the good behaviour of a prisoner, the period fixed for such prisoner's detention in custody, on failure to furnish the security required shall not exceed three years, except in the cases specified in the following clause.

*Second.*—Whenever there may not be adequate proof for the prisoner's conviction of the specific offence charged, but from the evidence adduced, he may appear to be of a character so notoriously bad and dangerous, as to render his release, without substantial security, evidently unsafe and improper, the Session Judge in cases before him, or the Court of Foujdaree Udalut in trials referred to them, shall be competent to order the indefinite confinement of the prisoner on default of giving the security required.

*Third.*—To these cases the provisions of the 2d and following clauses of Section IX of this Regulation shall be applicable; but when a Session Judge, by virtue of the authority vested in him by the latter part of Clause 2 of that Section, shall modify the terms of the security required to be taken under the orders of the Foujdaree Udalut, he shall report the same for the information of that Court.—*Sec.* X, *Reg.* VI, 1827.

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*Clause* 1, *Sec.* X, *Reg.* VI, 1827. *Security.*—For general rules to be observed, in requiring security, by all Courts, *see Sec.* VII—and for course to be taken by Session Judge on petitions against requisitions of security by Criminal Judges, *see Sections* VIII and IX of *Reg.* VI, 1827, entered after *Sec.* XVI, *Reg.* X of 1816—and for similar directions in case of Magistrates, *see Clause* 2, *Sec.* III, *Reg.* II of 1822, and *Clause* 2, *Sec.* V, and *Clause* 2, *Sec.* VI, *Reg.* VI of 1827, entered under *Reg.* IX of 1816.

*Clause* 3. *Provisions of Sec.* IX.—*See* under *Reg.* IX of 1816—they provide for the production of the prisoner before the Session Court at a stated period—the re-consideration of his case—and his remand, if necessary, under the same, or modified conditions.

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# PERJURY AND FORGERY,

## Reg. VI. of 1811, &c.

*A Regulation to provide more effectually for the punishment of perjury, subornation of perjury, and forgery.*

Whereas obstruction to justice, and other inconveniences have arisen in consequence of persons of the Hindoo or Mahomedan persuasion being compelled to swear by the water of the Ganges, or upon the Koran, or according to other forms which are repugnant to their consciences or feelings;

It is hereby enacted, that except as hereinafter provided, instead of any oath or declaration now authorized or required by law, every individual of the classes aforesaid, within the territories of the East India Company, shall make affirmation to the following effect:—

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

And it is hereby enacted, that if any person making such affirmation as aforesaid, shall wilfully and falsely state any matter or thing, which if the same had been sworn before the passing of this Act, would have amounted to perjury; every such offender shall be subject in all Courts to the same punishment to which persons convicted of perjury were subject before the passing of this Act.

And it is hereby enacted, that any person causing or procuring another to commit the offence defined in the second Section of this Act, shall be subject in all Courts to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.

And it is hereby provided, that this Act shall not extend to any declaration made under the authority of Act No. XXI of 1837, nor to any declaration or affirmation made in any of Her Majesty's Courts of Justice.—*Sec.* I—IV, *Act No.* V *of* 1840.

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*Sec.* IV. See Act XXI of 1837 at page 60.

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III. *First.*—If any person amenable to the jurisdiction of a Session Court, shall be convicted before that Court, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, of the crime of wilful perjury, or of subornation of perjury, or of forgery, as defined in the following Section of this Regulation; and shall, in consequence, by the futwah of the Mahomedan Law Officer of the Session Court, be declared liable to discretionary punishment *(tazeer, ookoobut* or *seeasut,)* the Session Judge, before whom the trial may be held, provided he concur in the conviction of the prisoner (and shall consider him a proper object of corporal and ignominious punishment) shall sentence the offender to be publicly exposed, in the mode commonly denominated *tusheer;* to receive 150 lashes with a cat-of-nine tails, and to be imprisoned and kept

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III. *Clause* 1.—Security is not demandable in any of these cases.—*F. U.* 29*th March* 1837, *C. R.* 283.

*Perjury.*—Upon the subject of prosecutions for perjury, the Court of F. U. in issuing their C. O. 31st January 1814, have observed—"It certainly is desirable that prosecutions for perjury should not be instituted in cases wherein there may be reason to doubt that the offence has been wilful and complete. The frequency with which the natives of India are charged with perjury, and the generally unsuccessful termination of the prosecutions for this crime, shew, in the strongest light, the expediency of using the most studious caution in selecting cases for prosecution. The escape of any notorious offender must be supposed to encourage the commission of the crime: while, to subject to ignominious punishment any individual who may have incurred the penalties of the law, from inadvertence in a point on which the opinions of Europeans and Natives may be at variance, rather than by a wilful and corrupt violation of truth, must be a matter of deep regret. The punishment of other offences, not capital, admits of reform; the culprit expiates his offence, and returns to society: but the man who has once been branded as a liar must ever hide his face. Such at least is the obvious intention of the law, and it should be carried into effect in the same spirit. No person should be made the object of a prosecution for perjury, who has not been cautioned against committing himself on oath, and has, subsequently, persisted in maintaining falsehood for truth. The frequency of prosecutions for perjury, without this precaution, must make the Courts of Judicature a terror to the honest witness, by exhibiting instances of men, of respectability and character, being hurried to gaol, or compelled to give bail for their appearance to take their trial, on an ignominious charge, without having had an opportunity of explaining what might, perhaps, be only a slight inadvertence or misapprehension. The want of this precaution must, on the other hand, give confidence to the liar, by facilitating his escape from punishment, since it is essential to conviction that the perjury should be deliberate and intentional; and this must be difficult of proof where the witness has not been warned of his danger. Even in cases where a witness has, on two occasions, given glaringly contradictory and irreconcilable testimony, on oath, regarding one and the same transaction, he should be warned of the difference between his statements, and be allowed to offer any explanation, with a view to reconcile them, before he is committed to take his trial for perjury. It is, indeed, by the most patient preliminary proceedings alone, that a beneficial operation can be given to the legislative enactments against this crime; and a resort to them in any case, wherein it may be possible to give an honest interpretation to the deposition of a witness, must be productive of injurious consequences.

*Tusheer.*—In regard to this description of punishment, it may be useful to insert here the observations made thereon by the Indian Law Commissioners, who proposed to exclude it altogether from the Penal Code:—

"We also considered whether it would be advisable to place in the list of punishments the degrading public exhibition of an offender on a pillory, after the English fashion, or on an ass in the manner usual in this country. We are decidedly of opinion that it is not advisable to inflict that species of punishment. Of all punishments this is evidently the

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to hard labour for a period not less than four, and not more than seven years. If it appear proper to banish the prisoner, during the period of his confinement, from the district in which he may have resided, he will be further liable to such sentence, in pursuance of Clause third, of Section VIII, Regulation XV, 1803; provided, however, that if the Session Judge, on consideration of the circumstances of the case, and the prisoner's situation, shall deem the punishment above specified too severe, he shall *recommend, and the Foujdaree Udalut may sanction such mitigation as may seem proper, in the mode prescribed in Clauses* 2, 3, *Sec.* III, *Reg.* I *of* 1825—*incorporated with Clause* 5, *Sec.* IV, *Reg.* XV *of* 1803, *which see.—Sec.* V, *Reg.* I, 1825.

*Second.*—If the Session Judge differ in opinion from the law officer of that Court, with respect to the conviction of the prisoner, he shall not pass any sentence, but shall transmit his own and

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most unequal. It may be more severe than any punishment in the Code. It may be no punishment at all. If inflicted on a man who has quick sensibility it is generally more terrible than death itself. If inflicted on a hardened and impudent delinquent, who has often stood at the bar, and who has no character to lose, it is a punishment less serious than an hour of the treadmill. It derives all its terrors from the higher and better parts of the character of the sufferer: its severity is therefore in inverse proportion to the necessity for severity. An offender, who, though he has been drawn into crime by temptation, has not yet wholly given himself up to wickedness and discarded all regard for reputation, is an offender with whom it is generally desirable to deal gently. He may still be reclaimed. He may still become a valuable member of society. On the other hand the criminal for whom disgrace has no terrors, who dreads nothing but physical suffering, restraint, and privation, and who laughs at infamy, is the very criminal against whom the whole rigour of the law ought to be put forth. To employ a punishment which is more bitter than the bitterness of death to the man who has still some remains of virtuous and honorable feeling, and which is mere matter of jest to the utterly abandoned villain, appears to us most unreasonable. If it were possible to devise a punishment which should give pain proportioned to the degree in which the offender was shameless, hard-hearted and abandoned to vice, such a punishment would be the most effectual means of protecting society. On the other hand, of all punishments the most absurd is that which produces pain proportioned to the degree in which the offender retains the sentiments of an honest man. This argument proceeds on the supposition that the public exposure of the criminal has no other terrors than those which it derives from his sensibility to shame. The English pillory, indeed, had terrors of a very different kind. The offender was, even in our own time, given up with scarcely any protection to the utmost ferocity of the mob. Such a mode of punishment is indeed free from one objection which we have urged against simple exposure; for it is an object of terror to the most hardened criminal. But it is open to other objections so obvious, that it is unnecessary to bring them to the notice of His Lordship in Council. That the amount of punishment should be determined, not by the law or by the tribunals, but by a throng of people accidentally congregated, among whom the most ignorant and brutal would always on such an occasion be the most forward, would be a disgrace to an age and country pretending to civilization. We take it for granted, that the punishment which we are considering, if inflicted in any part of India subject to the British Government, would consist in degrading exposure and nothing more. That punishment, we repeat, while it would be a mere subject of mockery to shameless and abandoned delinquents, would, when inflicted on men who have filled respectable stations, and borne respectable characters, be so cruel that it would become justly more odious to the public than the very offences which it was intended to repress."

*Clause* 2.—It is discretional with the Judge to award stripes and tusheer.—*F. U.* 28*th January* 1827.—*C. R.* 89.

Mitigation need only be recommended when four years are deemed too great a punishment.

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the Criminal Judge's proceedings, with his sentiments, in a letter to accompany them, for the sentence of the Court of Foujdaree Udalut.

*Third.*—In cases of reference to the Foujdaree Udalut, that Court shall, if the prisoner be convicted, sentence him to any punishment deemed proper, not exceeding that specified in Clause first of this Section.

IV. *First.*—The crime of wilful perjury, subjecting the offender, on conviction, to the punishment stated in the foregoing Section, is hereby declared to be, giving intentionally and deliberately, before a Court of Judicature, Magistrate, or other authorized public officer, a false deposition, upon oath, or under a solemn affirmation, relative to some judicial proceeding, civil or criminal, and upon a point material to the issue thereof.

*Second.*—Subornation of perjury punishable under the preceding Section, is declared to be the crime of procuring, or causing another person to commit the offence of perjury as above described.

*Third.*—The penalties for forgery, stated in Section III, are meant to include all fraudulent and injurious fabrications, or alterations of written deeds, or of written or printed papers, of whatever description; as well as all counterfeit seals or signatures thereto; and the illicit imitation of any public stamp, or stampt paper, established by government. It is further hereby declared that persons convicted of procuring, or causing, any such forgery, will be liable to the same punishment, as those convicted of having actually committed the forgery, at the instigation of others.

*First.*—If a party or witness shall wilfully and deliberately give two contradictory depositions on oath, or under a solemn affirmation, on a matter or matters of fact material to the issue of a judicial proceeding, such party or witness shall be liable to be committed for trial before the Session Court for wilful and corrupt perjury; provided that the contradiction between the two depositions be direct and positive, and that, upon the whole circum-

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*Clause* 3.—Refusal of F. U. to mitigate does not render necessary infliction of stripes or tusheer.—*F. U. 28th January* 1837.—*C. R. No.* 176.

IV. *Clause* 1.—A witness deposing falsely, on a point material to the issue of a judicial proceeding, may be convicted of perjury, although such witness may not have been cited to prove the said point.—*F. U. 14th March* 1837.—*C. R.* 204.

*Clause* 2. A successor in office may prosecute for perjury, &c., committed before his predecessor.—*F. U. 14th March* 1837.—*C. R.* 203.

*Clause* 3.—Fabrication of a Rahdaree, or pass on sale of Cattle, not forgery.—*F. U. 21st October* 1836.—*C. R.* 33.

Contradictions in the same deposition cannot be charged as perjury under Reg. III, 1826. There must be *two* depositions.—*F. U. 8th January* 1835.—*V. M.* 7.

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stances of the case, there be strong grounds to presume the corrupt intention of the party or witness.

*Second.*—For the conviction of a person committed for trial on a charge of perjury under the preceding Clause, no other evidence shall be requisite than clear and satisfactory proof that the party or witness, having been duly sworn, or having made a solemn affirmation, wilfully and deliberately caused the two contradictory depositions to be taken down in writing; and that, before he affixed his signature or mark thereto, their contents were distinctly read over to him.

*Third.*—Persons convicted under the foregoing Clause, shall be liable to the punishment prescribed for perjury by Section III, Regulation VI of 1811, subject to the rules established for the remission or mitigation of the punishment in other cases of conviction.

It is hereby declared that a person who, under the rules contained in the foregoing Section, has been tried on a charge of perjury, founded on his two contradictory depositions, shall not, whether convicted or acquitted, be afterwards liable to a prosecution for the same offence, charging the perjury in the usual way specifically on either of the said two depositions.—*Sections* II, III, *Reg.* III, 1826.

*Second.*—The Session Judge before whom a prisoner may be convicted of having forged, or procured to be forged, any counterfeit coin in imitation of any of the gold, silver, or copper coins of the British governments in India, or of any coin usually received as money in the British possessions in India, shall, provided he concur with the law officer in the conviction of the prisoner, sentence him to be publicly exposed in the mode commonly denominated *tusheer*, to receive 150 lashes with a cat-of-nine tails, and to be imprisoned in banishment from the district for the period of fourteen years; unless the Session Judge, on consideration of all the circumstances of the case, shall be of opinion that any part of the prescribed punishment is too severe, in which case he shall be authorized to mitigate the sentence to imprisonment, with or without *tusheer*, for any period not less than seven years.

*Third.*—If in any instance the Session Judge shall be of opinion that a further mitigation or remission of punishment is necessary, he shall, provided he concur in the conviction of the prisoner, pass sentence according to the preceding Clause, and refer the trial, with his sentiments at large, for the final sentence of the Court of Foujdaree Udalut, who shall have authority to mitigate the sentence at their discretion.—*Sec.* V. *Reg.* II, 1822.

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*First.*—Any person who shall be convicted before a Session Court, or the Court of Foujdaree Udalut, of paying or tendering in payment, counterfeited coin, knowing the same to be counterfeit, shall be sentenced to imprisonment for such period, not exceeding seven years, as the Session Judge, or the Court of Foujdaree Udalut may deem adequate to the circumstances of the case; and shall also, in all instances of an aggravated nature, or of a repetition of the offence, after being once convicted and punished, be sentenced to public exposure by *tusheer*. In every instance of a repetition of the offence after a previous conviction and punishment, the Session Judge shall further, at his discretion, sentence the offender to receive corporal punishment not exceeding 150 lashes with a cat-of-nine tails.

*Second.*—The provisions contained in the preceding Clause are declared applicable to persons convicted of clipping, filing, drilling, defacing or debasing the gold or silver coin of the British Government in India, or any coin usually received as money within the British possessions in India.—*Sec.* VI, *Reg.* II, 1822.

If any person subject to the jurisdiction of a Zillah Magistrate, shall be convicted of having in his or her possession, any counterfeited coin, and shall not shew good and sufficient cause for having such counterfeit coin in his or her possession, the person so convicted shall be sentenced by the Magistrate to pay a fine equal to four times the nominal value of such counterfeit coin in his or her possession; one moiety of which fine shall, on receipt of it, be given to any informer or informers who may have given information of the offence, and established the truth of it. In the event of such fine not being paid, the person convicted shall be confined in the Zillah Jail for such period as the Magistrate may direct, not exceeding six months.—*Section* VII, *Reg.* II, 1822.

*First.*—It shall be unlawful for any person subject to the jurisdiction of the Courts in the Provinces, except by the direction or under the authority of the Officers of Government, knowingly to make or mend, or to buy or sell, or conceal, or to have in his possession any tool or instrument used exclusively for coining money, or any stamp, or mould, or dye, or other implement whatsoever, capable of producing the exact impression, or so near a resemblance as to be mistaken for the impression, of any of the gold, silver, or copper coins of the British Government in India, or of any coin usually received as money in the British possessions in India; and it is hereby declared that every such act shall be punishable as a misdemeanour under the following rules.

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*Second.*—On receiving a charge of any of the acts mentioned in the preceding Clause, the Magistrate or the Head of District Police shall proceed as is directed in all other cases of misdemeanour under the general Regulations; and if there shall be reasonable grounds to believe the charge well founded, he shall forward the prosecutor, the witnesses, and the accused, with all the proceedings in the case to the Criminal Judge of the Zillah.

*Third.*—Any person who shall be convicted before the Criminal Judge of any of the acts mentioned in Clause first of this Section, without shewing lawful authority or sufficient excuse for the same, shall be sentenced to imprisonment and hard labour in irons for a term not exceeding one year for the first offence; and for a second offence, committed after his conviction of the first, he shall be sentenced to receive corporal punishment not exceeding 150 lashes with a cat-of-nine tails, and to be imprisoned and kept to hard labour in irons for a term not exceeding eighteen months.

*Fourth.*—For a third or any subsequent offence under this Section, the offender shall be committed for trial before the Session Court; and on conviction thereof shall be sentenced to receive corporal punishment not exceeding 195 lashes with a cat-of-nine tails, and to be imprisoned and kept to hard labour in irons, in banishment at the discretion of the Judge, for a term not exceeding seven years.—*Sec.* IV, *Reg.* VI, 1827.

The restriction contained in Section XXIX, Regulation IX of 1816, against prosecutions of witnesses and parties in the Civil Courts for perjury and subornation of perjury, unless the Officers presiding in those Courts shall be of opinion that there are grounds for such prosecutions, is hereby extended to all charges of perjury, or subornation of perjury, against witnesses and prosecutors in the Criminal Courts.—*Sec.* VIII, *Reg.* II, 1822.

*First.*—In further modification of the provisions contained in Section VIII, Reg. X, 1816, it is hereby enacted that in all cases wherein any person giving evidence on oath, or under a solemn affirmation, before a Magistrate or Collector, a Joint or Assistant Magistrate, or a Subordinate or Assistant Collector, or before a Sudder Ameen, district or village Moonsif, or district or village Punchayet, may be considered by the tribunal before which such evidence is given, to be guilty of wilful perjury, or subornation of perjury, as defined by law, the accused shall be forwarded, with the proceedings on which the charge is founded, to the Criminal Judge, by the tribunal before which the said proceedings may have been held, with the sentiments of that tribunal on the case; and the Criminal Judge shall dispose of the same under the general regulations.

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*Second.*—In the event of committing such cases for trial before the Session Court, the Criminal Judge shall appoint the Vakeel of Government to conduct the prosecution before that Court.

*Third.*—The restrictions contained in Section XXIX, Regulation IX, 1816, against the prosecution for perjury, or subornation of perjury, of witnesses or parties in the Civil Courts, and in Section VIII, Regulation II, 1822, against that of witnesses or prosecutors in the Criminal Courts, unless the officers presiding in those Courts respectively, shall be of opinion that grounds exist for such prosecutions, are hereby extended to all charges of perjury and subornation of perjury against witnesses or parties, or against witnesses or prosecutors, as the case may be, before any of the public officers or tribunals referred to in Clause first, unless such officers or tribunals shall be of opinion that grounds exist for such prosecution.—*Sec.* III, *Reg.* VIII, 1829.

V. Persons charged with the crime of perjury, subornation of perjury or forgery, as defined in the preceding Section, and appearing to the Civil or Criminal Courts by whom they may be ordered to be brought to trial before the Session Courts, to have been guilty of the charge, shall not be admitted to bail, (notwithstanding any thing declared to the contrary in any existing regulation) unless specially authorized by the Court under whose directions they are committed for trial. But nothing herein contained shall be construed to preclude the Criminal Judge from admitting to bail, persons committed by him for trial, on charges

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Sec. III, Reg. VIII, 1829.—Under Act VII of 1843 this would apply to Principal Sudder Ameens as well as Subordinate Judges; but it may be noted, that even prior to that enactment, the Principal Sudder Ameen had co-ordinate powers with the Zillah Criminal Judge, in such cases.—As by Sec. V, Reg. II of 1831, he could commit those falling under his own view; and by Act XXIII of 1837 was invested with those herein given to the Criminal Judge.

V. *Criminal Judge.*—The word in this and the following Section was originally "Magistrate," this alteration is virtually rendered necessary by Reg. X of 1816, as the F. U. remarked, when explaining the principles on which they issued *C. O.* 12*th Feb.* 1834.

"So long as the offices of Judge and Magistrate were united in the same person, there "existed no difficulty in executing this law. But in 1816 when they were disunited, an "oversight was evidently committed, in not transferring to the Criminal Judge, who then "became the exclusive Committing Officer, the power of committal which Sections V and "VI, Reg. VI, 1811, still contemplate as vested in the Magistrate."

The Criminal Judge therefore is the authority, who as explained in the above quoted C. O., is, notwithstanding Sec. VIII, Reg. X of 1816, to commit for trial those parties regarding whom he may be so instructed by the superior Courts therein mentioned. He is also the officer with whom under Sec. VIII, Reg. III, 1802, as declared in XXIX, of IX, 1816, rests the power of taking primary cognizance of all charges of perjury or subornation of perjury, made by litigant parties in Civil suits, and by Sec. VIII, Reg. II of 1822, in criminal trials also—while Sec. III, Reg. VIII, 1829, particularises other tribunals and authorities, who are at liberty to bring before him parties who may apparently have been guilty of perjury or subornation of perjury before themselves, and to suggest their committal. No charge of perjury can in short be committed except by the Criminal

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preferred originally before him, in cases cognizable by him under the regulations, without any order from a Civil or Criminal Court for the commitment of such persons for trial before the Session Court.

VI. Whenever a witness giving evidence before a Session Court may be considered by the Judge of that Court to be guilty of wilful perjury; or whenever a person attending a Session Court may be considered by the Judge of that Court to be guilty of subornation of perjury, or of forgery, in any trial or matter depending before the Court; it shall be competent to the Session Judge to direct the Criminal Judge to commit the person so charged for immediate trial before the Session Court. Provided that nothing in this Section shall be considered to authorize the conviction or punishment of any person, charged with the crimes specified, until he shall have been regularly put upon his trial; or until any material evidence which he may have to offer in his defence shall have been received and duly considered.

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Judge—to him must be forwarded all parties whom it may be desired to prosecute. The superior tribunals mentioned in C. O. 12th February 1834 may direct the committal, in cases presented for commitment by the other authorities mentioned, he is at liberty to exercise his discretion, and dispose of them under the general regulations: or in other words, he *must* commit cases of perjury, subornation, or forgery sent to him for the purpose by the Sudder or Foujdaree Udalut, or by the Civil or Session Courts, and he *may* commit those falling under his own cognizance; he *may* also commit cases of perjury and subornation, brought under his view to that end, by other Civil and Criminal Courts, and by authorities specified in Sec. III, Reg. VIII, 1829. He cannot however take primary cognizance of cases of forgery, unless sent to him by the above mentioned superior authorities or falling under his own view—in all other cases of that crime, the proceedings must originate with the Magistrate.

The Magistrate is the proper authority to take primary cognizance of all cases of forgery not falling under the judicial view of the Zillah Courts, *F. U. 24th July* 1837, *C. R. No.* 851, *p.* 430; and when a Court of Appeal may see reason to believe that a witness in his examination before the Court from which the Appeal is made, has committed perjury, it is the duty of the Appeal Court to take steps to bring the said witness to trial without reference to the opinion of the lower Court, as to there being sufficient grounds for putting the party on his trial: it being improper either to apply for or be guided by such opinion.—*F. U. 14th March* 1837, *C. R.* 206.

VI. This enactment is now apparently superfluous; as originally applied to the Circuit Courts, it was intended to prevent delay. Under it, as well as under the preceding Section, a Session Judge is competent to direct the Criminal Judge to commit for trial, any party who may appear to have been guilty in his Court of the crimes specified.

The following precept for the committal of witnesses under these circumstances was approved by the F. U. under date 7th September 1835, and *mutatis mutandis*, may be useful as a model:—

*Extract Proceedings Session Court* ———————— *in Case No.* ———

It appearing to the Session Judge that the 1st witness A. B., and 2d witness C., have been guilty of perjury in swearing (or solemnly affirming) that they saw the 2d prisoner D, and the 3d prisoner E, hanging up the body of the deceased F, about noon on ——— Ordered that the said two witnesses be sent as prisoners to the Subordinate Judge (or Principal Sudder Ameen) together with the documents and depositions which disprove the allegations of the said two prisoners, as to their having been then and there so situated; and that he be by precept required to commit the said two witnesses, to take their trial for the said perjury before the Session Court.

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Any witness examined by the Collectors, or by the Native Assessors, under Reg. VI of 1831, who shall be guilty of a wilful and corrupt breach of his oath, or solemn affirmation, shall be liable to prosecution for perjury, and on conviction before the Session Court, shall be subject to the penalties prescribed for perjury committed before the ordinary Courts of Judicature.—*Cl.* 5, *Sec.* IV, *Reg.* VI, 1831.

If any person shall forge, or shall use knowing it to be forged, any document required by this Act—*for regulating emigration*—such person shall be liable to be imprisoned for any period not exceeding seven years.—*Sec.* XV, *Act* XV, 1842.

It shall be lawful for the Governor in Council of any Presidency of which there is a Council, and for the Governor of any Presidency of which there is no Council, to dispense with any Oath which by any Regulation of that Presidency, or by any Act of the Governor General of India in Council, is now required to be taken.

Provided always, that the dispensing power given by this Act shall not extend to any Oath now required by Law to be taken in any stage of any judicial proceeding.

Whenever any Oath is dispensed with under the authority given by this Act, the person who, but for such dispensation, would have been legally required to take such Oath, shall, in the presence of the functionary by whom, but for such dispensation, such Oath would have been administered, make and subscribe a Declaration in writing to the same effect with such Oath.

Whoever shall, in any Declaration made and subscribed according to the provisions of this Act, knowingly state any untruth such that if that untruth had been stated on Oath, the person stating it would have been guilty of perjury, shall be punished with imprisonment for a term not exceeding one year, or fine, or both.—*Sec.* I—IV, *Act* XXI, 1837.

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Act XXI, 1837.—This has reference only to Oaths of office, &c. *see note on Sec.* V, *Reg.* VII, 1802, *p.* 17. In all judicial proceedings oaths are required, as heretofore, from all persons except Hindoos and Mahomedans who are exempt by Act V of 1840, *which see at p.* 51.

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# MAGISTRATE,

## Reg. IX. of 1816, &c.

*A Regulation for reducing into one Regulation certain rules which have been passed regarding the office of the Zillah Magistrate, and for modifying and defining his powers.*

III. The Collectors of the several Zillahs shall hold the office of Magistrate of their respective Zillahs; previous to entering upon the execution of the duties of the office, they shall make and subscribe a declaration according to the Form prescribed in No. 1 of the Appendix to this Regulation, before the Governor in Council, or any person whom he may commission to administer it.

*First.*—It is hereby provided that every subordinate Collector shall have full authority to exercise within the portion of the district placed under his charge, the powers granted to Collectors as Magistrates by Regulation IX, 1816, or by any other Regulation.

*Second.*—It is hereby provided that it shall also be competent to a subordinate Collector further to exercise the powers above specified, either generally throughout the district, or specially for the conducting of any enquiry at the huzzoor station, or in any other part of the district, when delegated to him by the Collector as Magistrate.

*Third.*—The exercise of the powers described in the preceding Clauses of this Section by the Subordinate Collector, shall not

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Reg. IX. *Magistrate.*—The following observations on the mode of discharging the duties of a Magistrate in this country, seem important and useful :—

A Magistrate should reserve to himself the general control of the Police, and have a general knowledge of the manner in which the business is conducted by his subordinates, to enable him to interfere, whenever he may, for any special cause, deem it necessary. It is important that the native establishment, as well as the people, should see that the chief control is retained in his hands, and that he is equally anxious in regard to every part of his duties. To effect this, he must limit himself to matters of real importance, leaving the details, under control on his own part, in the hands of his subordinates, and not doing business which can be efficiently performed by them.—*Beng. C. O. No.* 151 *of Vol.* 2.

III. *Form No.* 1.—This form, as well as those referred to as Nos. 2, 3, 4, 5, 6, 7, 8, 10, in the subsequent clauses of this Regulation, being in constant use in every Magistrate's office, it has not been thought necessary to insert them in an Appendix.

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supersede or exclude the authority of the Collector as Magistrate throughout the whole district, but shall, as far as occasion may require, be subordinate thereto.

*Fourth.*—Subordinate Collectors in the exercise of the powers above specified shall be designated "Joint Magistrates."—*Sec.* V, *Reg.* II, 1827.

IV. The Assistants to the Collectors of Zillahs shall be Assistants to the Magistrates of the Zillahs.

V. The Zillah Magistrates are authorized to employ their Assistants in the execution of such part of their prescribed duties, as from the extent of their general business or other cause they may be unable to give due attention to themselves, provided, that previous to any such Assistant entering upon the exercise of judicial authority, he shall make and subscribe before the Magistrate a declaration according to the Form prescribed in No. 2 of the Appendix to this Regulation.

VI. The Assistants to the Zillah Magistrates, who may have made and subscribed the declaration prescribed by this Regulation, are authorized to exercise the judicial power vested in the Magistrates by this Regulation, as far as may be necessary to enable them to perform the duties committed to them respectively, by the Magistrates with whom they are stationed.

In towns where from the resort of Europeans, the employment of a Native as Ameen of Police may be found insufficient, an Assistant Magistrate shall be stationed, and shall, within his jurisdiction, have the same Police authority as is granted to the Magistrate by this Regulation, or such part of it as may be deemed expedient by the Magistrate.—*Sec.* XLI, *Reg.* XI, 1816.

Such part of Section XLI, Regulation XI, 1816, as may be construed to restrict the authority of Assistant Magistrates to the towns in which they may be respectively deputed to reside, is hereby rescinded; and Zillah Magistrates are hereby declared to be authorized to delegate to their Assistants the whole or any part of their duty as Magistrates, and to depute them to hold their offices in any of the districts within their several jurisdictions which may be deemed proper.—*Sec.* II, *Reg.* IX, 1818.

In any case requiring the immediate interference of the Magistracy, when there may not be a Magistrate or Assistant Magistrate present at the Zillah station, it shall be competent to the Criminal Judge to do all acts necessary for preserving the public peace or securing public offenders, which it would be competent to the Ma-

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IV, VI. The extent and nature of the powers which may under these provisions be delegated to Assistant Magistrates, are laid down in C. O. 20th August 1821, 30th January 1824, and 7th June 1834 A; *which will be found under Sec. II, Reg. IX*, 1818.

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gistrate in such case to do; and it shall be the duty of all Police officers to afford him the most prompt and effectual aid.—*Sec.* III, *Reg.* III, 1817.

It shall be competent to the Governor in Council of Fort St. George to appoint any Military officer in the service of the East India Company, a Magistrate or Assistant Magistrate in one or more Zillahs, and to confer on any Assistant Magistrate, by a special order, any of the powers of a Magistrate, any law or regulation to the contrary notwithstanding.—*Act* IV, 1847.

*First.*—It shall be competent to the Governor in Council by an order in Council, to authorize any Principal Sudder Ameen to exercise the same powers as a Magistrate may now, or hereafter be empowered by any Regulation to exercise, in respect of all persons sent before him by any Head of Police, charged with offences punishable by a Magistrate; and on the publication of such order in Council by proclamation, Heads of Police shall send to the Principal Sudder Ameen, instead of to the Magistrate as before, all persons (Europeans and Americans excepted), against whom there is evidence of having, within the Principal Sudder Ameen's jurisdiction, committed or been concerned in any offence punishable by the Magistrate, but to which the punishment which they are themselves empowered to inflict shall not appear to them adequate; together with the prosecutor and witnesses.

*Second.*—Provided always that nothing in this Section contained, shall be construed to prevent the Magistrate of the District from exercising the powers vested in him by the Regulations, when residing within the limits of the Principal Sudder Ameen's jurisdiction, or to authorize the Principal Sudder Ameen to exercise any authority over the Police except in the cases specified in Regulation III, 1817,—*which see above.*

*Third.*—Any summons or other Criminal process which a Principal Sudder Ameen acting under this Section may have occasion to issue, shall be served by Peons of his own Court; and Section XLI, Regulation IX, 1816, shall be applicable to the Peons so employed.—*Sec.* XIV, *Reg.* VIII, 1827.

As often as the Governor General of India, or the Commander-in-Chief of all the Forces in India, or the Lieutenant Governor of the N. W. P., shall pass through any part of the Territories of the East India Company attended by a Camp, it shall be lawful for the Governor General of India in Council, by an Order in Council, to appoint a Superintendent of Police of such Camp.

With respect to all offences committed in any such Camp, or on the line of march between the stations of any such Camp, such

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Reg. VIII, 1827.—A Principal Sudder Ameen in his Magisterial capacity can use no other official designation than "Principal Sudder Ameen."—*F. U. 9th Dec.* 1836, *C. R. No.* 97.

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Superintendent shall have concurrent Criminal jurisdiction with the Magistrate of the Zillah or City within which such offence shall have been committed.

As often as the said Superintendent shall by virtue of the powers conferred on him by the preceding Clause, commit any person for trial before the Sessions Court, or sentence any person to imprisonment, it shall be lawful for the said Superintendent to transmit such person to the Magistrate of the Zillah or City where the Camp shall then be, with a copy of the commitment or sentence, under the hand of him the said Superintendent, and the said Magistrate shall give effect to such commitment or sentence.

All officers subordinate to the Magistrate of the Zillah or City where such Camp shall be, shall be assisting to the said Superintendent in the exercise of the powers conferred on him by this Act, in the same manner as they are bound to be assisting to the said Magistrate.—*Act* XXVI, 1836.

VII. The Magistrate shall use a circular seal one inch and three quarters in diameter, bearing the following inscription, in the Persian character and language, and also in the character and language of the district.

"The seal of the Magistrate of the Zillah of ———." The seal of each Magistrate is to remain in the custody of the Magistrate.

VIII. The special jurisdiction of the Magistrates of the several Zillahs is to extend throughout the districts included in the Zillahs in which they are respectively stationed: Provided however, that the Magistrates be not considered to have any jurisdiction or authority whatever in the town of Madraspatnam, or any places adjacent within the limits of the jurisdiction of the Supreme Court of Judicature at Madras.

The Magistrates shall be charged with the maintenance of the peace, within their respective Zillahs; and whenever their establishments may be insufficient to resist banditti, or other disturbers of the public peace, they shall apply for assistance to the nearest military station.

The Police establishment which may be transferred to the Collectors as Magistrates, shall not be considered as distinct from the Revenue establishments, but shall be equally employed in Police and Revenue duties, as occasion may require.—*Sections* XLVII, XLVIII, *Reg.* XI, 1816.

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Sec. XLVII, Reg. XI, 1816. *Apply for assistance.*—The application should state in writing, as fully and circumstantially as practicable, the nature of the service required to be performed, to the Officer Commanding the Corps, or Detachment, from which the aid is to be furnished; leaving it to the Commanding Officer, on consideration of the circumstances stated, to judge of the strength of the force which should be employed in the execution of the duty in question.—*Beng. Reg.* XI, 1806, *Sec.* XIV, *Cl.* 1.

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IX. It shall be the duty of the Magistrate to apprehend murderers, robbers, thieves, house-breakers, and disturbers of the peace, and persons charged before him with crimes or misdemeanors.

X. *First.*—Persons accused of treason, murder, robbery, setting fire to any house or village, house-breaking, theft, or counterfeiting of the coin, provided there shall appear sufficient grounds for believing the charge, shall not be admitted to bail; but if the charge be for manslaughter, or any species of illegal homicide not involving the crime of murder, the Magistrate is authorized to proceed in the first instance, either by warrant for taking into custody, or by summons requiring bail, as he may judge proper, on consideration of the circumstancces of the case, and of the condition and character of the party accused.

*Second.*—The principle of the latter part of the preceding Clause, is also declared applicable to persons appearing from the Magistrate's enquiry to have been only privy or incidentally accessary to crimes of a heinous nature, without being concerned therein either as principal, or as aiding and abetting, procuring or instigating the perpetration thereof.

XI. The Magistrates upon receiving any charge for any heinous crime, or misdemeanor, are to be careful to ascertain from the complainant, and to record upon their proceedings, on what day of the month, in what year, and at what time of the day or night, the act complained of was committed.

XII. *First.*—Upon a complaint being preferred in writing to a Zillah Magistrate, against any person subject to his jurisdiction, for treason, murder, robbery, house-breaking, theft, setting fire to a village, house or other building, counterfeiting the coin, or any other crime declared not to be bailable, or though not so expressly declared, involving such dangerous breach of the peace or degree of criminality, as from the facts deposed to before the Magistrate, may appear to require the immediate apprehension of the accused, and to render the admission of bail unsafe and improper, the Magistrate, on the truth of the charge being deposed to by the complainant, or in the manner required by the following Sections,

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IX. *Crimes and Misdemeanors.*—By Reg. IX of 1822, and VII of 1828, and Act XXXVI of 1837, Collectors, their Subordinates, and Assistants, have primary cognizance of cases of corrupt exaction, unauthorized collections, embezzlement of public property, and falsification of, or other injury to Revenue accounts, or other accounts relating to any public property.

*Murder.*—Magistrates should publicly notify that persons aware of the discovery of a dead body bearing signs of violence, are bound to give information to the Police, and that parties putting such body out of the way, without giving such information to an officer empowered to hold an inquest, are liable to be proceeded against for a misdemeanor.—*F. U. 12th Oct.* 1836, *C. R. No.* 39.

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shall issue a warrant under his official seal and signature, specifying the crime charged, and directing the officer entrusted with the execution of it to apprehend the person accused.

*Second.*—The warrant shall be in the Form prescribed in No. 3 of the Appendix to this Regulation, and shall be directed to any Police Officer.

*Third.* If the Magistrate shall in any bailable case, judge it proper to authorize the Officer to whom the warrant is committed, to receive bail for appearance (with or without security for keeping the peace), it shall be so specified in the warrant, with the extent of the bail (and security) required according to the Form prescribed in No. 4 of the Appendix to this Regulation.

*Fourth.*—The bail to be taken for appearance before the Magistrate, shall be in the Form prescribed in No. 5 of the Appendix to this Regulation.

*Fifth.*—When security may be required for keeping the peace, it shall be taken in the Form prescribed in No. 6 of the Appendix to this Regulation.

XIII. The attendance and deposition of the complainant shall not be indispensable in preferring a criminal charge, when sufficient reason can be assigned for his non-attendance. If the complainant be unable to attend in person, or were not himself present at the commission of the act complained of, his written plaint presented by an authorized agent, and corroborated by the deposition on oath or on solemn affirmation, of one or more persons present or otherwise personally informed of the truth of the complaint, shall be sufficient grounds for receiving the same, and for issuing process against the party accused, unless the Magistrate see reason for making the previous enquiry authorized by the following Section; but no warrant for apprehension shall be issued on a complaint, unless the truth of the charge be deposed to on oath (or under a solemn affirmation) either by the complainant himself, or by some other credible person. This shall not however be construed to restrict a Magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may appear upon the report of a Police Officer, or upon any other credible information.

XIV. If the Magistrate see cause to distrust the truth of a complaint preferred to him, and if the immediate arrest of the party complained against appear unnecessary and objectionable, the Magistrate is authorized to postpone his issuing his warrant for

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XIV. A Magistrate is authorized to refer complaints for disposal to Head of Police previous to apprehension of parties charged.—*F. U. 7th Aug.* 1837, *C. R.* 868.

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apprehension, and to cause a previous enquiry to be made, either by means of the local Police Officers, or in such other mode as he shall judge most proper for the purpose of ascertaining the truth or falsehood of the complainant's allegations; if the result of such enquiry induce the Magistrate to believe the charge well founded, and the offence committed be of the nature described in Section XII of this Regulation, he shall issue his warrant for apprehending the accused as therein directed; but if the accusation appear groundless, or though well founded, if the offence be of a bailable nature, he is empowered in the former case to dismiss the complaint, or in the latter case to direct bail to be taken from the accused, for appearance in person or by vakeel, to answer the charge, as provided by the following Section.

XV. *First.*—Upon a complaint in writing being preferred to a Zillah Magistrate, against a person subject to his jurisdiction, for any bailable crime or misdemeanor which may not appear to require the immediate apprehension of the accused, the Magistrate, upon the party complaining making oath, or solemn affirmation to the truth of the complaint, or without such oath or affirmation, if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to by some other credible person or persons, shall issue a summons under his official seal and signature, to be served by any Police Officer.

*Second.*—The summons in all such instances shall specify the offence with which the accused is charged, and shall, according to the circumstances of the case, contain a requisition to attend either in person or by vakeel, to answer to the charge on or before a certain day to be stated in the summons, according to the Form prescribed in No. 7 of the Appendix to this Regulation.

*Third.*—If it be deemed necessary to require bail, the extent of the bail is to be specified in the summons, in the Form prescribed in No. 8 of the Appendix to this Regulation.

*Fourth.*—The bail to be taken for appearance before the Magistrats in pursuance of the above Clause, shall correspond with the Form prescribed by Clause IV, Section XII of this Regulation.

XVI. If an accused person on whom a summons shall have been served, shall not attend in person or by vakeel, and give bail (if required) according to the exigence of the summons, within the period limited by it, the Magistrate shall issue a warrant under his official seal and signature, for the apprehension of the accused, and if he abscond or conceal himself so that he cannot be found, shall proceed against him in the manner directed in the following Section.

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In the Territories subject to the Government of the East India Company, except the local jurisdiction of the Supreme Courts, whenever in any criminal case a summons to the Defendant is by Law the first process, it shall be lawful for any Court which has issued a summons in such case, to issue a warrant for the apprehension of the Defendant in such case, upon proof that due diligence has been used to serve such summons upon the Defendant, and that the Officer or other person whose duty it may be to serve such Summons upon the Defendant has been unable to serve such summons; any law or regulation to the contrary notwithstanding. —*Act No.* X *of* 1845.

XVII. *First.*—The Magistrate is to cause a written proclamation in the language of the district, requiring the absent party to appear to answer the charge against him within a fixed period of time, not less than one month, to be publicly read, and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party may have usually dwelt, or some conspicuous place in the village in which he may have generally resided. In case the party shall not appear and deliver himself up within the period fixed by such proclamation, the Magistrate, on receiving the Police Officer's return to this effect, is to order the attachment of any land or other real property held by the absentee within his jurisdiction, in the following manner.

*Second.* If the absentee be a proprietor of land, or sudder farmer, paying revenue to Government, the Magistrate shall hold the land or farm of the absentee in attachment, and take such measures as may be necessary for the due care and management of the lands whilst under his charge, subject to the instructions of the Board of Revenue, to whom he is to make an immediate report of any instances of land being attached by him under this Regulation.

*Third.*—If the absentee be not a proprietor or farmer of land paying revenue to Government, but as a dependant talookdar, under farmer, or ryot, or in any other capacity whatever, be the tenant of landed property capable of attachment, the Magistrate shall attach the same, and adopt the necessary measures for the due care and management of it whilst under his charge, paying from the product any rent which may become due to the zemindar or other person entitled thereto, and deducting all necessary expenses in the account to be rendered to the absentee, whenever he may attend, and the attachment of his property be removed.

*Fourth.*—In all instances wherein an attachment of property may be made under the foregoing rule, the Magistrate, immediately on the attendance of the party for whose appearance it was or-

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dered, shall direct that the attachment be removed, and that a full and fair account be rendered of all receipts and disbursements during the period of attachment.

*Fifth.*—Should the absentee neglect to attend for a period of six months after the lands have been ordered under attachment, the Magistrate shall report the case to the Governor in Council, who will pass such order upon it and upon the future disposal of the lands as he may judge proper.

XVIII. *First.*—If any person amenable to the authority of the Magistrate, shall resist, or cause to be resisted, any warrant, order or other process of any Magistrate, the Magistrate of the Zillah in which such resistance may have been made, on the same being charged on oath or affirmation, shall, if practicable, cause the party to be apprehended and brought before him to answer to the charge. If the party shall abscond or conceal himself, so that he cannot be apprehended, the Magistrate is to cause a written proclamation in the language of the district, requiring the party to appear to answer the charge against him within a fixed period of time, not less than one month, to be publicly read and proclaimed by beat of drum, and to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party may have usually dwelt, or some conspicuous place in the village in which he may have generally resided. If the party charged as above cannot be apprehended, and shall not within the period fixed by proclamation appear to answer the charge against him, or if he shall be apprehended, or shall appear in pursuance of the proclamation, and after receiving his answer to the charge and hearing the evidence he may adduce in his defence, it shall be proved to the satisfaction of the Magistrate that he is guilty of the charge, the Magistrate is to pass judgment against him in the following manner.

*Second.*—If the offender be a zemindar, talookdar or other proprietor of land paying revenue to Government, or the proprietor of ultumgah, aymah, or other lands exempt from revenue, situated within the Zillah in which the resistance was made, and the case shall not come under the rule provided in Clause fifth of this Section, the Magistrate shall declare such lands to be forfeited to Government, and shall hold them in attachment till the receipt of orders from the Governor in Council, to be communicated in the manner hereafter directed.

*Third.*—If the offender be a sudder farmer holding a farm from Government within the Zillah in which the resistance may have been made, and the case shall not come under the rule provided in Clause fifth of this Section, the Magistrate shall declare his lease

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cancelled, and shall proceed as above required with respect to lands declared forfeited to Government.

*Fourth.*—If the offender be not a proprietor of land or sudder farmer, paying revenue to Government as described in the two foregoing Clauses, the judgment against him shall declare him liable to the payment of such fine to Government as may appear proper upon a consideration of his rank and circumstances in life, and the offence of which he may be convicted; and the Magistrate shall immediately proceed to the attachment of any property appertaining to the offender for the recovery of the same, in the manner authorized by the Regulations for the recovery of sums of money decreed by the Civil Courts of Justice; in cases wherein the offender may have been apprehended, and may not be possessed of property adequate to the discharge of the fine adjudged against him, the Magistrate, with the concurrence of the Foujdaree Udalut, may commute such fine to imprisonment or corporal punishment.

*Fifth.*—In cases of resistance to the process of a Magistrate, not attended with aggravating circumstances, wherein the Magistrate before whom the charge may be tried, shall adjudge it sufficient to inflict the punishment which he is authorized to inflict for petty offences, under Section XXXII of this Regulation, it shall not be necessary to transmit his proceedings for the consideration of the Foujdaree Udalut, as required by Clause sixth of this Section, but the judgment of the Magistrate shall be executed, in such cases, without reference to the Foujdaree Udalut.

*Sixth.*—Provided always that the whole of the judgments passed by the Magistrates under this Section (with an exception to the judgments passed under the preceding Clause) be immediately reported with a complete copy of their proceedings, to the Court of Foujdaree Udalut, and the orders of that Court be received under the following Section, before the judgment passed by a Magistrate under this Section be considered final and conclusive.

XIX. The Foujdaree Udalut on the receipt of the proceedings above referred to, are to pass such order thereupon as they may think proper, on due consideration of the evidence, and all the circumstances of the case, and in all instances wherein the forfeiture of the offender's lands or lease may appear to them too severe a punishment for the offence, they are authorized to commute the same for such fine to Government as they may judge adequate, and order the attachment of the lands to be taken off on the payment thereof. The sentence of the Foujdaree Udalut is to be final in all cases of fine, imprisonment and corporal punishment, but in case they shall confirm the judgment of the Magistrate for a for-

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feiture of the offender's lands or lease, they are, previously to ordering such sentence to be carried into execution, to transmit their proceedings, with those of the Magistrate, to the Governor in Council, who will finally determine whether the sentence of forfeiture shall be put in force, or commuted to a fine, or otherwise; and who, whenever he may order the land or lease of the offender to be forfeited to Government, will at the same time cause the necessary instructions for the future disposal of the land to be conveyed to the Collector through the Board of Revenue. In case the Magistrate's judgment of forfeiture be set aside either by the Foujdaree Udalut, or the Governor in Council, he shall immediately on being informed thereof, and on receipt of the fine (if a fine be ordered) remove the attachment and cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment.

XX. The rules contained in Section XVIII of this Regulation, shall not restrict the Magistrates from admitting to bail persons charged with resistance to a warrant, order, or other process of a Magistrate in cases not attended with aggravating circumstances, or in any case when the Magistrate upon receipt of the charge, or in the course of his enquiry respecting it, or after he shall have passed judgment upon it, during the reference required to be made to the Foujdaree Udalut, may judge proper to admit the Defendant to bail. As resistance of process is not included in the specification of crimes declared not bailable, it is hereby declared that persons apprehended on a charge of resistance of process, under this or any other Regulation, and who may not be accused of any aggravating crime in addition to the resistance of process, such as is declared not bailable by Section X of this Regulation, are to be admitted to bail until a final decision shall have been passed upon the charge, provided the bail offered by them shall appear to the Magistrate sufficient for securing the appearance of the persons so charged during the prescribed investigation of the case.

*First.*—Whenever a Native subject of the British Government, shall be charged with murder or homicide of any sort, robbery, house-breaking, arson, rape, or other great personal violence, counterfeiting the coin of the British Government, violent affrays, or any other serious offence, committed in any place out of the British Provinces, and shall be found, or having been apprehended elsewhere, shall be brought, within the British territory, the Magistrate or any Native Head of District or Village Police within whose jurisdiction he may be found, or brought, shall proceed respecting him in the manner prescribed in the following clause.

*Second.*—If such accused person shall be brought in the first

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instance before the Magistrate, he shall make such inquiry into the charge as the circumstances of the case and the evidence attainable may admit of. Should the result of such inquiry induce the Magistrate to believe the charge groundless, or the accused innocent thereof, he shall dismiss the complaint, and release the accused; but if he consider the charge well founded against the accused, he shall report his proceedings to the Governor in Council, committing the accused to safe custody, or holding him to bail, according as the nature of the charge may require. In case of bail, the form of the bail bond shall be, to appear before the Magistrate on a certain day assigned (leaving time for the receipt of the orders of Government), and on such subsequent days as the Magistrate shall require. In case of commitment to safe custody, the form of the warrant shall be until the orders of Government are received.

*Third.*—If such accused person shall be brought in the first instance before a Native Head of Village or District Police, he shall in all cases be forwarded, by the latter, to the Magistrate, instead of to the Criminal Judge as directed by Clause fourth, Section XXVII, Regulation XI of 1816, together with the witnesses and the proceedings held. The Magistrate shall then proceed as directed in the preceding Clause.—*Sec.* III, *Reg.* II, 1829.

In cases referred to Government under the preceding Section, as well as in all cases of the like nature which may in any manner come before the Governor in Council, if it appear proper that the accused person should be brought to trial for the offence imputed to him, the Governor in Council shall be competent to direct that the accused person be brought to trial before any of the established Courts of Criminal Judicature within the British provinces, which he may be pleased to appoint; and the special order of the Governor in Council for the purpose shall be deemed full and sufficient authority for the trial and punishment of such accused person, by the Court so appointed, as well as by the Court of Foujdaree Udalut, if the case be referrible to them, under the general Regulations in force.

Whenever a Native subject of the British Government shall be brought to trial before any of the established Courts of Criminal Judicature under the provisions of this Regulation, the trial shall be conducted, and sentence thereupon passed, and carried into execution, under the general Regulations in force, in like manner as if the offence had been committed within the British territories and the case subject to the ordinary jurisdiction of those Courts. —*Sec.* IV—V, *Reg.* II, 1829.

The provisions contained in Regulation II, 1829, for the pun-

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ishment of crimes committed beyond the British territories in India, shall be considered applicable to the following classes of persons, and to no other.

*First.*—Natural born subjects of the British Government in India.

*Second.*—Natives of India, who may have become subjects of the British Government in India, by the conquest, or cession of the places in which they were born, for acts done by them subsequently to the period of such conquest or cession.

*Third.*—Natives of the foreign states of India, in the Civil or Military service of the British Government in India, while actually in such service, and during six months after they shall have quitted the British territories; or (supposing them to be stationed out of the limits of the British territories) after they shall have quitted the service: provided however, that nothing contained in this Regulation shall be construed to authorize any of the established Courts in the British provinces, to take cognizance of any charge against a native military officer, sepoy, trooper, or other person, for which he may have been already tried by a court martial under the Rules and Articles of War.

*Fourth.*—All persons, other than British born subjects of Her Majesty, who being resident within the Company's frontiers, may have purchased any lands, or other immoveable property, or hired the same for any period exceeding six months, or who may have otherwise fixed, or may hereafter fix their residence in the Company's territories with the intention of settling therein; or who may in any manner have lived and resided therein for a period of not less than six months.—*Sec.* II, *Reg.* XII, 1832.

XXI. In cases of gang robbery, murder, or other heinous crime, when the Magistrate shall be of opinion that the ordinary process prescribed for the apprehension of public offenders would be ineffectual, or when the offenders may not be known, if it appear advisable, to the Magistrate of the jurisdiction in which the crime may be committed, to offer a reward for the discovery and apprehension of the offender or offenders, he shall offer such reward as shall be deemed sufficient, not exceeding in any case the sum of one hundred Rupees for a surdar, or leader of a gang, and twenty Rupees for each of the inferior offenders that may be discovered and apprehended in consequence. In any case which may

Cl. II, Sec. II, Reg. XII, 1832. *Second—Natives of India, &c.*—A native born within the British territories, is considered a native British subject (under the second class described) although he may have resided in a foreign territory for any number of years.—*Beng. Const.* 703.

XXI. There may be more than one Surdar to a gang.—*F. U.* 19*th May* 1837, *C.R.* 579.

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appear to the Magistrate to require a larger reward, he shall report the same to the Court of Foujdaree Udalut, with his opinion of the reward that should be offered, and the Court of Foujdaree Udalut may authorize such reward as shall appear sufficient, not exceeding the sum of five hundred Rupees for a surdar or leader, and one hundred Rupees for each of the inferior offenders; if these rewards appear to be in any case insufficient, the Court of Foujdaree Udalut shall report the same for the consideration and orders of Government.

XXII. All specific rewards offered under the discretion of the Magistrate, or which may have been duly sanctioned by the Court of Foujdaree Udalut, or the Governor in Council under the preceding Section, shall be payable on the conviction of the offender or offenders before the Session Courts. The Session Courts are also hereby empowered to direct the payment of any part of the specific rewards authorized, although the persons apprehended may not be convicted of the crimes charged against them, if from proof of their notorious bad character and the whole of the evidence, there appear to be ground of presumption that the information given against the prisoners was well founded; provided farther that it shall be competent to the Session Court to withhold and prohibit the payment of the whole, or any part of the specific rewards offered under the preceding Section, although the persons informed against, and apprehended, may be convicted, if it should appear on the trial that any improper means have been taken by the informer with a view to the conviction of the accused, or that the latter has suffered any maltreatment from the former, or from any person under his influence.

In modification of the provisions contained in Section XXII, Reg. IX of 1816, regarding payment of specific rewards, it is hereby enacted that all specific rewards offered for the apprehension of robbers proclaimed by name, shall be payable on the delivery of the persons so proclaimed, to the Zillah Magistrate by whom the proclamation may have been issued, or to the Magistrate in whose jurisdiction they may have been apprehended.—*Sec.* VI, *Reg.* I, 1818.

XXIII. In cases wherein any meritorious service may have been rendered by Police Officers or others, in the apprehension or discovery of public offenders, for whom no specific reward may be payable to the person or persons who have performed such meritorious service, the Session Courts, on due consideration of the

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XXIII. Activity of Police Peons, in apprehending certain escaped convicts, commended, but not held entitled to reward as being no more than their duty.—*F. U. 4th July,* 1837, *C. R.* 978.

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service rendered, the exertions made, and any expense incurred in the performance of it, are authorized to direct the payment of such remuneration as may be considered adequate, not exceeding the sum of one hundred Rupees for a surdar, and ten Rupees for an accomplice. If a larger reward be deemed proper, a report of the case shall be made to the Court of Foujdaree Udalut, who are authorized to direct the payment of any sum not exceeding five hundred Rupees. If in any case it appear proper to grant a higher reward or compensation than five hundred Rupees, the Court of Foujdaree Udalut shall report the same for the consideration and orders of Government.

The power vested in the Session Courts by the provisions of Section XXIII, Regulation IX, 1816, of rewarding meritorious service rendered by Police Officers or others, in the apprehension of public offenders, is hereby extended to the Magistrates and Criminal Judges.—*Sec.* X, *Reg.* XIII, 1832.

XXIV. *First.*—Upon a prisoner being brought in the first instance before the Magistrate, charged with any crime or misdemeanor, he shall enquire into the circumstances of the charge, and examine the prisoner, and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and commit their respective depositions to writing. The witnesses shall be examined upon oath, or solemn affirmation, but the prisoner shall not be required to swear to or affirm the truth of his deposition; after this enquiry, if it shall appear to the Magistrate that the crime or misdemeanor charged against the prisoner was never committed, or that there is no evidence of his having been concerned in the committing of it, the Magistrate shall cause him to be forthwith discharged, recording his reasons for releasing him, and submitting them to the Session Court with the calendar ordered to be prepared in Section XL of this Regulation.

*Second.*—If on the contrary it shall appear to the Magistrate, that the crime or misdemeanor was actually committed, and that there is evidence of the prisoner's having been concerned in the perpetration of it, the Magistrate shall send the prosecutor, the witnesses and the prisoner, with the proceedings on the case, to the Criminal Judge of the Zillah; but it shall not be necessary for the Magistrate to go further into the examination, than to satisfy his own mind that there is ground to believe the prisoner guilty of the crime charged against him.

When a Magistrate shall be of opinion from any particular circumstances connected with the case of a prisoner whom, under Clause second, Section XXIV, Regulation IX, 1816, it is his duty to send to the Criminal Judge of the Zillah, that it is necessary in furtherance of the ends of justice, that such prisoner should be

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tried or committed for trial in some other Court than that within the jurisdiction of which the offence charged against him was committed; he shall report that opinion, together with the grounds of it, and the circumstances of the case, to the Court of Foujdaree Udalut; and that Court shall submit the same, with their opinion, to the Governor in Council.

On the receipt of such report from the Foujdaree Udalut, or of other sufficient information, it shall be competent to the Governor in Council, to order a prisoner to be sent for trial, or committal, to whatever Court may appear to him most proper for the furtherance of the ends of justice.

When a prisoner shall be ordered to be sent to any other Court than that within the jurisdiction of which the offence charged was committed, he shall be sent accordingly, together with the prosecutor, witnesses and documents in his case, and with a certified copy of the order of Government—and that order shall be sufficient authority for the Criminal Judge, to whom he is therein directed to be sent, and eventually for the Session Court of the Zillah, to proceed respecting his case in the same manner as if he had been sent by the Magistrate or a Tahsildar within their own jurisdiction.—*Sections* II, III, IV, *Reg.* III, 1827.

XXV. Whenever the Magistrate may forward a prisoner to the Criminal Judge, under the preceding Section, he shall send by the Police Peons in charge of the prisoner, a paper containing the name of the prisoner, the crime with which he is charged, and date of the charge, the date of his apprehension, and a list of the prosecutors and witnesses, and of all examinations and depositions that may have been taken, either by himself, or any Police Officers. The Judge shall immediately on the receipt of such paper, certify on the back of it, whether or not the prisoner and documents have been received, and shall return it by the Police Peons to the Magistrate, and no other communication shall be necessary.

The Criminal Judge may call for any documents required to be transmitted to him by the Magistrate under Section XXV, Regulation IX of 1816, or by a Police Officer under Section XXVII, Regulation XI of 1816, which may not be so transmitted. And it is hereby declared that nothing in the existing Regulations is intended to prohibit a full and free communication between the Criminal Judge and the Magistrate, on all subjects connected with the discharge of their respective duties, in those capacities.—*Sec.* II, *Reg.* III, 1817.

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XXV. This paper may be in the Native language, except in cases of perjury, when the Magistrate should proceed as directed in C. O. 1st August 1821, which see under Reg. VI, 1811.—*C. R. No.* 141, 585, 586.

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XXVI. When a prisoner confesses, before the Magistrates, the crime or misdemeanor of which he may have been accused, the Magistrates are to be careful to have such confession witnessed by as many creditable persons, who may be present at the time it may be made, as the Mahomedan Law requires to give it validity; but the Magistrates are strictly enjoined to satisfy themselves that all confessions made by prisoners are free and voluntary. The Magistrates are further required to take special care, that persons upon being apprehended, are not made to suffer corporal punishment, or otherwise ill-treated under the pretence of compelling them to answer truly to questions, that may be put to them, or under any other pretext whatever.

XXVII. No private compromise or razeenamah shall be admitted by the Magistrate in crimes of a heinous nature, such as on conviction may require exemplary punishment for the ends of public justice.

XXVIII. All examinations and depositions taken before the Magistrate, are to be written on separate papers, signed by the Deponents, attested by the signature of the Magistrate, and are to be taken and written in the language in which the Deponents may desire to have the same recorded.

XXIX. The Magistrates of the several Zillahs shall not receive any charges of perjury which may be preferred by parties in civil suits, either against their own witnesses, or against the witnesses of the adverse party, or of subornation of perjury against

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XXVI. See C. Os. on subject of confession, under Section XXX, XI, 1816.

XXVII. This is identical with Section VIII, Reg. IX of 1807 of the Bengal Code. And it has been there ruled, "that the principle of the prohibition is applicable to, and obligatory upon, the whole of the Criminal Courts." A Session Judge would not therefore be justified in admitting a compromise in crimes of such serious nature—especially crimes recognized as such in the Regulations, and when it has been expressly directed that the offenders should be brought to trial before the Criminal Courts; nor can he in any case admit a formal razeenamah, to bar the trial of a commitment; both as there is no provision for such in the existing Regulations, and as the established practice of discharging the prisoner on acquittal, when evidence is not adduced for his conviction, and the ends of public justice do not require a postponement of the trial for further evidence, appears preferable to the admission of a compromise, which might perhaps leave the prisoner exposed to a future prosecution.—*Beng. C. O.* 187, *Vol.* 1.

The Mahomedan law recognizes the right of the ruling power to punish serious offences for the ends of justice, though the injured individual waives his private claim.—*N. A. R. Vol.* 1, *p.* 367.

Notwithstanding a private compromise of theft, the Magistrate may, if he think proper, direct a public prosecution.—*Beng. Const.* 318.

In a case of rape, the Court sentenced the prisoner to punishment, although a razeenamah was filed by the injured party, in consequence of the prisoner's promise to marry her:—as in so heinous an offence a compromise was deemed inadmissible.—*N. A. R. Vol.* 3, *p.* 127.

XXIX. For further restrictions in this respect, see Sec. VIII, Reg. II of 1822, and Clause 3, Sec. III, Reg. VIII of 1829, incorporated with Reg. VI of 1811.

the adverse parties in such suits; and all individuals whose attendance is required in the Civil Courts, either as plaintiffs, defendants or witnesses, are hereby declared not to be liable to any prosecution of this description, unless they shall be committed to take their trial by the Zillah Judge under the authority vested in him by Section VIII, Regulation III, 1802.

XXXI. All Europeans, not British subjects, shall be amenable to the authority of the Magistrates, the Criminal Judges, and Session Courts, within whose jurisdiction they may be apprehended, and brought to trial, in common with the natives of the country.

XXXII. The Magistrates are empowered to hear and determine without reference to any authority, all complaints or prosecutions brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults or affrays, and to punish the offender when convicted, by committing him to prison in the Zillah Jail, or Village Choultry, as to them may seem proper, for a term not exceeding fifteen days, or by imposing a fine upon him: but the fine is in no case to exceed the sum of fifty Rupees, unless the offender be a zemindar, independent talookdar, or other actual proprietor of land paying an annual revenue to Government of more than ten thousand Rupees, or a proprietor of ayma land paying a quit revenue to Government exceeding five hundred Rupees per annum, or of lakheraj land, the annual produce of which may be above one thousand Rupees, in which cases such offender shall be liable to a fine not exceeding two hundred Rupees. The Magistrate is to fix the amount of the fine under the limitations prescribed, upon a due consideration of the nature of the case, and the situation and circumstances in life of the offender.

XXXIII. The Magistrates are authorized to hear and determine without reference to any authority, all complaints or prosecutions brought before them for petty thefts, when they shall not have been attended with any aggravating circumstances, or committed by persons of notorious bad characters, and to inflict upon the offenders corporal punishment not exceeding ninety lashes with

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XXXI. *European, &c.*—See note on Section XXVI, Act VII of 1844.

XXXII. A party sentenced to fine under this Section, for a breach of the peace, may also be called upon for security "*to keep the peace*" under Sec. V, Reg. VI of 1827, but not for good behaviour under Clause 1, Sec. VI of the same Regulation.—*F. U. 17th January*, 1837, *C. R.* 319.

XXXIII. *Corporal punishment.*—This was abolished in Bengal by Reg. II of 1834, and subsequently again legalized, in certain cases of petty theft, by Act III of 1844. The Indian Law Commissioners, speaking of this mode of punishment, remarked, "We have not thought it desirable to place flogging in the list of punishments. If inflicted for atrocious crimes with a severity proportioned to the magnitude of those crimes, that punishment is open to the very serious objections which may be urged against all cruel punishments, and which are so well known, that it is unnecessary for us to recapitulate them.

a cat-of-nine tails, or commit them to prison in the Zillah Jail, or Village Choultry, as to them may seem proper, for a term not longer than one month, according as they may think proper upon a consideration of the circumstances of the case.

Petty cases of injury to Cattle, shall be punishable by the Magistrate, by imprisonment to the extent specified in Sec. XXXIII, Reg. IX, 1816.—*Cl.* 2, *Sec.* VIII, *Reg.* XIII, 1832.

It shall be competent to the Magistrate, to adjudge at his discretion, solitary imprisonment in all cases cognizable by him.—*Cl.* 1, *Sec.* IV, *Reg.* XIII, 1832.

Magistrates and their Assistants, shall be at liberty, in the examination of complaints for petty offences, and of complaints for petty thefts, to exercise their discretion whether to administer oaths or solemn affirmations, to the prosecutors and witnesses, or to examine persons without their being sworn, or put on affirmation.—*Sec.* IX, *Reg.* IV, 1821.

*First.*—In the investigation of complaints preferred under the provisions of Sections XXXII and XXXIII, Regulation IX, 1816, Magistrates are required to take down in writing, the complaint, and so much of the evidence as shall be material, together with the defence of the accused.

*Second.*—The original proceedings described in Clause first of this Section, shall accompany the calendars prescribed by Clause first, Section XI, Regulation IX, 1816; and the Session Court shall have authority to issue thereupon, the orders described in Clause second of that Section.—*Sec.* III, *Reg.* VIII, 1832.

XXXIV. *First.*—In cases of a prisoner punishable by the Magistrate under the two preceding Sections, being sent to the

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When inflicted on men of mature age, particularly if they be of decent stations in life, it is a punishment of which the severity consists, to a great extent, in the disgrace which it causes; and, to that extent, the arguments which we have used against public exposure, apply to flogging. The moderate flogging of young offenders for some petty offences is not open, at least in any serious degree, to the objections which we have stated. Flogging does not inflict on a boy, that sort of ignominy which it causes to a grown man. Up to a certain age, boys even of the higher classes, are often corrected with stripes by their parents and guardians; and this circumstance takes away a considerable part of the disgrace of stripes inflicted on a boy by order of a Magistrate. In countries where a bad system of prison discipline exists, the punishment of flogging has in such cases one great advantage over that of imprisonment. The young offender is not exposed, even for a day, to the contaminating influence of an ill-regulated gaol. It is our hope and belief, however, that the reforms which are now under consideration, will prevent the gaols of India from exercising any such contaminating influence; and, if that should be the case, we are inclined to think that the effect of a few days passed in solitude, or in hard and monotonous labour, would be more salutary than that of stripes. Being satisfied therefore, that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, we are unwilling to advise the Government to retrace its steps, and to re-establish throughout the British territories a practice which, by a policy unquestionably humane, and by no means proved to have been injudicious, has recently been abolished through a large part of those territories."

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Zillah Jail, the Magistrate shall forward with the prisoner a warrant in the Form prescribed in No. 10 of the Appendix to this Regulation, addressed to the Keeper of the Jail, who shall conform to the tenor of the warrant.

*Second.*—The warrant shall be accompanied by a paper addressed to the Criminal Judge, containing the name, the crime, or offence, and the period of confinement to which the prisoner may have been sentenced. The Judge shall return the paper by the Police Officers who may come in charge of the prisoner, with an endorsement attested by his official seal and signature, acknowledging the delivery of the prisoner.

XXXV. Where the complaints specified in Sections XXXII and XXXIII of this Regulation, shall appear to the Magistrate to be litigious, vexatious, or groundless, he is authorized to punish the complainant by fine or imprisonment, under the limitations and restrictions prescribed for the punishment of the offences specified in Section XXXII.

XXXVI. In cases of a trivial nature, such as abusive language, slight trespasses, and inconsiderable assaults or affrays, in which there may be no reason to apprehend that the party complained against will abscond, bail for appearance shall not be required in the first instance, but may at any time during the investigation of the charge be called for by the Magistrate, if any circumstances should occur to render it necessary. The Officer entrusted with the service of the summons in such cases, as well as in all other cases wherein bail may not be required, shall demand only an acknowledgment of the receipt of it, and in the absence of the party, the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party. The Officer serving the summons in such instances, shall be authorized on the tender of a razeenamah expressing the plaintiff's desire to withdraw his complaint, and the defendant's acquiescence in the complaint's being withdrawn, to receive such razeenamah as a sufficient return to the process committed to him; but excepting in the trivial cases noticed in this Section, no razeenamah shall be received without the special sanction of the Magistrate.

*First.*—It shall be competent to the Magistrate, and to the Heads of District Police acting under his orders, to apprehend,

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XXXV. This does not authorise the punishment of complaints *partially* groundless.—*F. U. 7th January*, 1837, *C. R. No.* 232.

Cl. 1, Sec. III, Reg. II, 1822. *Security for appearance.*—For further general rules on this subject equally applicable to Magistrates and Criminal Judges, see Sections VII and VIII, Reg. VI, 1827, entered after Sec. XVI in Reg. X, 1816.

This enactment does not sanction a requisition for security on the bare report of the

when it may seem proper, any vagrant, or suspicious person, or person without ostensible means of honest livelihood, or person of notoriously bad character; and the Magistrate, at his discretion, shall either take security for the appearance of such person, or issue his warrant for such person to be received and detained in the custody of the Criminal Judge.

*Second.*—It shall however be competent to the Session Judge at any time *(upon petition of the prisoners, Cl.* 2, *Sec.* VIII, *Reg.* VI, 1827*)* after making such enquiry as he may deem satisfactory, to order the release of any person so confined, either with or without security for his future appearance and good behaviour.

*Third.*—Persons so confined shall also be liable to be released at the discretion of the Magistrate by whom they were committed. —*Sec.* III, *Reg.* II, 1822.

*First.*—It is hereby declared that nothing contained in the existing Regulations was intended, or shall be considered, to preclude Magistrates from taking personal recognizances, or security for keeping the peace, or both at their discretion, in all cases wherein it may appear just and necessary to require the same for the due maintenance of the peace within their respective jurisdictions; and if such recognizance is not entered into, or such security is not found, to commit the persons, from whom they are demanded, to jail; provided however, that when there is no conviction of an actual breach of the peace, the amount respectively of the recognizance, and of the security to be demanded, shall in no instance hereafter exceed the sum of two hundred Rupees, and that the period for which the security is required, whether on conviction of an actual breach of the peace, or otherwise, shall in no case exceed the term of twelve months, at the expiration of which the party shall be released, if on default of security he shall have been detained in custody.

*Second.*—It is further provided that on petition from parties considering themselves aggrieved by the requisition of recognizances or security for keeping the peace, it shall be competent to the Session Judge to call upon the Magistrates for such explanations as may appear necessary in such cases; and on due consideration thereof, to order the discharge, or to alter the amount of the recognizance and securities, or to direct the release of the persons confined, if he shall see fit.

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Police Officer—no person should be lodged in Jail under it, without a personal examination and enquiry by the European Magistrate.—*F. U.* 19*th March*, 1835, *V. M. p.* 28.

A Magistrate cannot order the confinement of the persons described in Sec. III, Reg. II of 1822, and impose any period of imprisonment, without *first* demanding from the party security for appearance.—*F. U.* 28*th Feb*, 1837, *C. R. No.* 261, *p.* 127.

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*Third.*—Magistrates are hereby declared competent, at their discretion, to discharge recognizances and securities for keeping the peace taken by themselves, and to order the release of persons confined under their own order in default of entering into such recognizances, or giving such securities.—*Sec.* V, *Reg.* VI, 1827.

*First.*—In addition to the power granted to Magistrates by Clause first, Section III, Regulation II, 1822, it shall be competent to them, to require security for good behaviour from persons of the descriptions therein specified, and in default of its being given, to order such persons to be received and detained in the custody of the Criminal Judge.

*Second.*—In all cases wherein a Magistrate may require security for appearance under Clause first, Section III, Regulation II, 1822, or security for good behaviour under Clause first of this Section, he shall record the informations or evidence on which his proceeding is founded, to be transmitted to the Session Judge, if that officer should see fit to call for them.

*Third.*—The provisions of Clause third, Section III, Regulation II, 1822, shall be applicable to persons confined under Clause first of this Section.—*Sec.* VI, *Reg.* VI, 1827.

Whenever the Magistrates, under the authority granted to them by Cl. 1, Sec. III, Reg. II of 1822, and by Sec. VI, Reg. VI of 1827, may require security, they shall, in all cases in which they may deem it safe so to do, provide in their order, for the release of the prisoner within a definite period, not exceeding twelve months.—*Cl.* 1, *Sec.* VIII, *Reg.* VI, 1827.

XXXVIII. The Magistrates are to pay the customary daily subsistence money to all prisoners, from the time of their apprehension, to the date of their discharge or delivery to the Criminal Judge.

XXXIX. *First.*—No fines, except in the cases specified in the second Clause of this Section, shall be imposed by a Magistrate, save and except to the use of Government, and whenever a fine to the use of Government shall be imposed, the Magistrate who may pass the sentence, shall at the same time, weighing all the circumstances of the case, fix a definite period of imprisonment to be held as equivalent to the fine, at the expiration of which, the persons convicted shall be discharged, if they have not previously paid the fine. In cases in which the Magistrate shall impose fines, the imprisonment to be fixed by him as equivalent to the fines, shall

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Cl. III, Sec. VI, Reg. VI, 1827. That is, they may be released at the discretion of the Committing Magistrate.

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not exceed the periods specified in Sections XXXII and XXXIII of this Regulation.

*Second.*—In case of injury to any complainant, when the fine may have been levied, it shall be lawful for the Magistrate to award the whole, or any portion of such fine, to the party aggrieved, by way of satisfaction for such injury, as he may deem equitable.

In all cases of fines by which offenders are or may be punishable by any Magistrate, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the Governor General of India in Council, it shall be lawful, in case of non-payment, if no other means for enforcing the payment are, or shall be provided by such Act, or otherwise, for the Magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender, which may be found within the jurisdiction of such Magistrate; and if no such property shall be found within such jurisdiction, then it shall be lawful for every such Magistrate, by warrant under his hand, to commit the offender to prison; there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such Magistrate, for any term not exceeding two calendar months, where the amount of the fine shall not exceed 50 Rupees, and for any term not exceeding four calendar months, where the amount shall not exceed 100 Rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount.

In all cases in which offenders are or may be punishable by any Magistrate, with fine or imprisonment, or both, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the Governor General of India in Council, and where the extreme amount of the fine or imprisonment is not specified, it shall not be lawful for the Magistrate to impose any fine exceeding 200 Rupees, or to imprison the offender for any term exceeding six months.—*Sec.* I—II, *Act* II, 1839.

In all cases in which offenders are or may be punishable by fine before a Magistrate, according to the provisions of any Act heretofore passed, or which hereafter shall be passed by the Governor General of India in Council, it shall be lawful for the Magistrate, and he is hereby required, to receive proof of the commission of the offence upon oath, or upon solemn affirmation in cases where a solemn affirmation is receivable by law instead of an oath.

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Act II, 1839. This applies exclusively to fines imposed under an Act of the Supreme Government.

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And in this Act, and in all Acts heretofore passed by the Governor General of India in Council, the terms "fine" and "fines" shall extend to all "penalties" and "forfeitures," and the term "Magistrate" shall extend to all "Joint Magistrates," "Persons lawfully exercising the powers of a Magistrate," and "Justices of the Peace." —*Sec.* III—IV, *Act No.* II *of* 1839.

XL. *First.*—The Magistrates shall cause to be delivered to the Session Courts of their respective Zillahs, a calendar containing a list of all persons whom they may have apprehended for crimes or misdemeanors, and discharged for want of sufficient evidence; as also a calendar containing a list of all punishments which they may have ordered on petty offences or petty thefts.

*Second.*—These calendars are to be accompanied with all the original proceedings in each case, and if the Session Court shall be of opinion, that any of the persons mentioned in the first calendar have been discharged, or the persons specified in the second calendar punished upon insufficient grounds, they are to transmit to the Magistrate such written orders on the case as may appear to them proper, to which he shall conform.

*Third.*—The Session Courts are to report to the Foujdaree Udalut, for the information and orders of Government, whenever the Magistrates omit or refuse to obey their orders, as also whenever it shall appear to them that the Magistrates have been guilty of neglect or misconduct in the discharge of their duty.

XLI. Every summons, or other criminal process, shall be served by a Peon or other Police Officer receiving wages from Government, and no diet money, or other allowance or gratuity shall be demanded or received, from the complainant, or accused, whether the case be adjusted by razeenamah or otherwise, and the demand or receipt of such by any Public Officers, directly or indirectly, in violation of this rule, shall be punishable as a criminal offence, on conviction before the Magistrate, the Criminal Judge, or Session Court of the Zillah; the offender shall also be compellable, either by a criminal prosecution, or by a civil action, to refund the amount received, besides being liable to immediate dismission from office under the provisions contained in the existing Regulations.

XLII. Magistrates are hereby empowered to remove Police Officers from one station to another within their respective jurisdictions, without reference to any authority.

XLIII. The Zillah Magistrates and their Assistants are here-

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XLIII. Prosecutions under this Section are to be instituted in the Zillah Courts established by Act VII of 1843.—*Sec.* XXXVIII, *Act* VII *of* 1843.

For course of procedure in Civil Court on such prosecutions, see Reg. I, 1823.

*Opposition to Regulation.*—If this 'opposition' were wilful and against better know-

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by declared amenable to the Zillah Court in the jurisdiction of which they may reside, or carry on the public business committed to their charge, by a civil prosecution for any act or acts, done in their official capacity, in opposition to any established Regulation.

XLV. The offences specified in Sections XXIII and XXIV, Regulation I, 1812, shall be cognizable by the Magistrate, under the limitations with regard to the extent of punishment prescribed by Sections XXXII and XXXIII of this Regulation; but in all cases where the Magistrate may deem the punishment, which he is authorized to inflict, inadequate to the offence, he shall send the witnesses and the offender, with the proceedings on the case, to the Criminal Judge of the Zillah.

XLVII. All persons appointed to the station of Zillah Magistrate, are hereby required to take the prescribed oath of qualification to act as Justices of the Peace for their respective districts, within three months from the date of their appointment.

The Magistrates shall require all manufacturers of fire arms and offensive weapons, to take out licenses from their offices within a certain day, of which due notice shall be given, and any person who shall be found, after that period, manufacturing such weapons without license, shall be liable to be punished by the Magistrate, by a fine not exceeding fifty Rupees. But nothing in this Section shall be construed to prohibit the manufacture of arms, or the inhabitants from keeping them for their defence.—*Sec.* XLIX, *Reg.* XI, 1816.

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ledge, a Magistrate would be liable to an action in the Supreme Court under the Act of 24 Geo. III, as acting without, and beyond, his office, and consequently not entitled to its immunities or privileges.

"In order to render the provincial Magistrates, as well Natives as British subjects, more safe in the execution of their office, it is enacted, that no action for wrong or injury shall lie in the Supreme Court against any person whatsoever, exercising a judicial office in the country Courts, for any judgement, decree, or order of the said Court."—24 *Geo.* III, *Cap.* 70, *Sec.* 24.

The Mofussil Courts are protected, by the above clause, from actions for things done within their jurisdiction, though erroneously or irregularly done; but they are liable for things done wholly without jurisdiction, provided they had no knowledge, or means of knowledge, of which they ought to have availed themselves, of that which constitutes defect of jurisdiction. And it is not merely in respect to acts in Court,—*sedente curiâ,*—that the Mofussil Courts have an immunity, but in respect of all acts of a judicial nature. —*Judgement of Privy Council.—Morton's Reports, p.* 397.

For course of procedure in such actions, see 24 Geo. III, Cap. 70, Sec. 25, 26.

XLV. *Offences under Sec. XXIII, XXIV, Reg. I,* 1812.—Viz. instances of extortion on the part of Native Officers employed in collection of Customs—or parties assuming that character—which see incorporated with Reg. X of 1816, after Sec. VII—but by Act XXII of 1837, in Chingleput neither the Magistrate or Criminal Judge, has any jurisdiction in respect of offences, committed within the Collectorate of Madras against any Regulation relating to the public revenue, that jurisdiction being vested in the Superintendent of Police at Madras.

XLVII. This oath may be taken before any Civil or Criminal Court—see Act XVI, 1841.

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Arms, Ammunition and Military Stores, (with the exception of Arms in the possession of individuals for private use) shall not be exported, or otherwise taken from the territories of the East India Company, without a license from a public officer or officers for each Presidency, to be indicated by the Governments of the respective Presidencies, for the purpose of granting such licenses, and a full compliance with all such rules and conditions, as may be prescribed for the guidance of such officer or officers, in regard to such exports, by the aforesaid Governments respectively. And any Arms, Ammunition or Military Stores which any person shall export, or attempt to export, or take as aforesaid, contrary to this Act, shall thereby become forfeited, on the award of the officer or officers authorized to grant licenses, or the Collector of Customs, and every person offending in the premises contrary to this Act, shall be liable on conviction before a Magistrate, to a penalty not exceeding 500 Rupees.—*Sec.* I, *Act* XVIII, 1841.

Any person who shall collect or keep in one place, or within places not exceeding three miles in distance from each other, any quantity of Gunpowder exceeding fifty pounds, without a license from such officer as aforesaid, shall be liable, on conviction before a Magistrate, to a penalty not exceeding 500 Rupees, and such Gunpowder shall become forfeited, on the award of the officer or officers authorized to grant licenses as aforesaid, or the Collector of Customs.

It shall be lawful for any of the Governments aforesaid, to allow at any port or ports, the exportation of Arms, Ammunition and Military Stores as aforesaid, without any such license as aforesaid as they shall deem expedient.—*Sec.* II—III, *Act No.* XVIII *of* 1841.

Magistrates shall reciprocally communicate any information which they may receive of offences committed, or of gangs of robbers, or of suspicious persons having entered or taken refuge in each other's districts, and shall co-operate in all things for the apprehension of offenders, and the general security of the country.—*Sec.* L, *Reg.* XI, 1816.

*First.*—The Magistrate, and under his orders, the Tahsildars and

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Sec. L, XI, 1816. *Communicate information.*—The procuring of information seems more systematically provided for in Bengal than with us. Informers or "*Goindahs*" are recognised, and their employment by the Magistrates, authorised by special regulation. Their duties are defined to be "to discover the haunts of dacoits, to watch their movements, to mix with them occasionally with a view of acquiring accurate intelligence of their operations and designs, and to communicate to their employers the result of their enquiries. Goindahs receive a small monthly allowance for their immediate subsistence, and are rewarded for any particular duty according to their activity and fidelity."—*See Beng. C. Os.* 78 and 93 *of Vol.* 1.

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Heads of Villages, shall have authority to prevent the forcible occupation or seizure of lands and crops.

*Second.*—When riotous assemblages are formed in consequence of disputes respecting the right of ploughing any waste or uncultivated lands, which may not be in the possession or occupation of any person, the Magistrate, and under his orders, the Tahsildars and Heads of Villages, shall have authority to determine who shall plough them for the present, in order that cultivation may not be impeded by the land being kept uncultivated while the trial which the parties may seek is depending. But in all the cases specified in this Section, the parties shall be at liberty to seek redress from any competent jurisdiction.

*Third.*—The provisions of the two preceding Clauses shall be considered as equally applicable to the forcible occupation or diversion of water for cultivation.—*Sec.* LI, *Reg.* XI, 1816.

If any number of persons should assemble together in a manner indicating an intention to commit an unlawful act, or inconsistent with public tranquillity, it shall be competent to the Magistrate to order them to disperse; and to punish those who may not comply with such order, with fine not exceeding fifty Rupees, or imprisonment without labour not exceeding one month.—*Sec.* II, *Reg.* III, 1831.

Magistrates are authorized to determine the rates of hire to be paid in their respective districts by travellers to palankeen bearers, coolies, and boatmen, and for draught and carriage cattle; and the rates so determined shall be made public by a table authenticated by the signature of the Magistrate, copies of which shall be kept by the Police Officers, at the several stations in the district, for reference. Provided however, that the resident inhabitants, in their ordinary transactions, shall not be bound to abide by the rates specified in the tables authenticated as aforesaid.—*Sec.* LIII, *Reg.* XI, 1816.

Magistrates shall have authority to receive complaints regarding frauds committed in using false weights and measures, and in such cases shall proceed as directed in Section XXXII, Regulation IX, 1816.

No order shall be issued to any Police Officer, excepting by the Magistrate of the Zillah, or his Assistants.

The Magistrates shall correspond direct with Government in matters of Police, whenever they may deem it necessary.—*Sec.* LIV, LV, LVI, *Reg.* XI, 1816.

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Sec. LIV, XI, 1816. But they may be communicated with by the Criminal Courts, for the purpose of obtaining evidence.—*See Sec.* XLII, *Act* VII, 1843.

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The practice of Suttee, or of burning or burying alive the Widows of Hindoos, is hereby declared illegal, and punishable by the Criminal Courts.—*Sec.* II, *Reg.* I, 1830.

*First.*—All Zemindars, Talookdars, or other Proprietors of Land, whether Malguzaree or Lakheraj; all Sudder Farmers and under-renters of land of every description; all dependent Talookdars; all Naibs and other local Agents; all Native Officers employed in the collection of the Revenue and Rents of Lands on the part of Government, or the Court of Wards; and all Head Men of Villages; are hereby declared especially accountable, for the immediate communication to the Officers of the nearest Police station, of any intended sacrifice of the nature described in the foregoing Section; and any Zemindar, or other description of persons above noticed, to whom such responsibility is declared to attach, who may be convicted of wilfully neglecting or delaying to furnish the information above required, shall be liable to be fined by the Magistrate or Joint Magistrate in any sum not exceeding two hundred Rupees, and in default of payment to be confined for any period of imprisonment not exceeding six months.

*Second.*—Immediately on receiving intelligence that the sacrifice, declared illegal by this Regulation, is likely to occur, the Head of Police shall either repair in person to the spot, or depute one of his Subordinate Officers, accompanied by one or more Peons of the Hindoo Religion, and it shall be the duty of the Police Officers, to announce to the persons assembled for the performance of the ceremony, that it is illegal, and to endeavour to prevail on them to disperse, explaining to them that, in the event of their persisting in it, they will involve themselves in a crime, and become subject to punishment by the Criminal Courts. Should the parties assembled proceed, in defiance of these remonstrances, to carry the ceremony into effect, it shall be the duty of the Police Officers to use all lawful means in their power to prevent the sacrifice from taking place, and to apprehend the principal persons aiding and abetting in the performance of it, and in the event of being unable to apprehend them, they shall endeavour to ascertain their names and places of abode, and shall immediately communicate the whole of the particulars to the Magistrate or Joint Magistrate for his orders.

*Third.*—Should intelligence of a sacrifice, declared illegal by this Regulation, not reach the Police Officers until after it shall have actually taken place, or should the sacrifice have been carried into effect before their arrival at the spot, they will nevertheless institute a full enquiry into the circumstances of the case, in like manner as on all other occasions of unnatural death, and report

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them for the information and orders of the Magistrate or Joint Magistrate to whom they may be subordinate.—*Sec.* III, *Reg.* I, 1830.

*First.*—On the receipt of the reports required to be made by the Heads of Police, under the provisions of the foregoing Section, the Magistrate or Joint Magistrate of the jurisdiction in which the sacrifice may have taken place, shall enquire into the circumstances of the case, and shall adopt the necessary measures for bringing the parties concerned in promoting it, to trial before the Session Court.

*Second.*—All persons convicted of aiding and abetting in the sacrifice of a Hindoo Widow, by burning or burying her alive, whether the sacrifice be voluntary on her part or not, shall be deemed guilty of culpable Homicide, and shall be liable to punishment by fine, or by imprisonment, or by both fine and imprisonment, at the discretion of the Session Court, according to the nature and circumstances of the case and the degree of guilt established against the offender; nor shall it be held to be any plea of justification that he or she was desired by the party sacrificed, to assist in putting her to death.

*Third.*—Persons committed to take their trial before the Session Court for the offence above mentioned, shall be admitted to bail or not, at the discretion of the Criminal Judge, subject to the general rules in force in regard to the admission of bail.—*Sec.* IV, *Reg.* I, 1830.

It is further deemed necessary to declare, that nothing contained in this Regulation shall be construed to preclude the Court of Foujdaree Udalut from passing sentence of death on persons convicted of using violence or compulsion, or of having assisted in burning or burying alive a Hindoo Widow, while laboring under a state of intoxication, or stupefaction, or other cause impeding the exercise of her free will, when, from the aggravated nature of the offence proved against the prisoner, the Court may see no circumstances to render him or her a proper object of mercy.—*Sec.* V, *Reg.* I, 1830.

No person shall wear, or be accessary to the wearing by any other person, of any Chuprass or Badge, intended to resemble any

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Act XVIII, 1835. The Governor in Council conceives that the spirit of Act XVIII of 1835, prohibits the use by private individuals of badges resembling, or liable to be mistaken for, those worn by the servants of Government; and being of opinion that *any* badge worn in the same *manner* as those of the Government, namely, on a belt over the shoulder, is, and must be liable to be so mistaken, must decline to sanction the use, by private individuals, of badges *so* worn; no inconvenience can, he would observe, be occasioned by this prohibition, as such badge, as the law allows, can be worn, in some other and unobjectionable manner.—*Ext. Min. Cons.* 14*th Dec.* 1844.

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Chuprass or Badge worn by Servants of the Government, and every person violating this rule, shall be punishable by fine and imprisonment, on conviction, before a Magistrate, as for a misdemeanor.

Every Chuprass or Badge worn by any person not being a Servant of the Government, shall bear the name of the party by whom the wearer is employed, and whoever shall wear a Chuprass or Badge, or be accessary to the wearing such Chuprass or Badge otherwise than in conformity to this rule, shall be punishable by fine and imprisonment, on conviction, before a Magistrate, as for a misdemeanor.—*Act* XVIII, 1835.

Every person who shall make with any native of India, any contract for labor to be performed in any British or Foreign Colony without the territories of the East India Company, or who shall knowingly abet or aid any native of India in emigrating from the said territories for the purpose of being employed as a laborer, shall be liable, on conviction before a Magistrate or Justice of the Peace, to a fine not exceeding two hundred rupees for every native so contracted with, aided or abetted, and in default of payment of such fine, shall be liable to be imprisoned for a term not exceeding three months.

Provided always that nothing in this Act contained, shall be taken to apply to any native Seaman who shall of his own free will contract to navigate any vessel, or who shall embark on board such vessel in pursuance of such contract, or to any person who shall contract to serve as a menial servant only, or who shall embark as such menial servant.—*Sec.* II—III, *Act* XIV, 1839.

It shall be lawful for any Magistrate, when the public benefit and comfort are in question, to cause unlawful obstructions and nuisances to be removed from thoroughfares and public places, and to suppress, or cause to be removed to a different place, trades or occupations injurious to the health or comfort of the community, and to prevent such construction of buildings, and such disposal of combustible substances, as may appear to him likely to occasion conflagration, and to cause the removal of buildings in such state of weakness, as, by the probability of their falling, may appear to him to expose individuals to danger.—*Sec.* I, *Act* XXI, 1841.

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Act XIV, 1839. Repealed as far as regards Mauritius—emigration to which, from the Ports of Calcutta, Madras and Bombay, is sanctioned under certain rules and restrictions by Act XV of 1842.

And in like manner repealed so far as regards Jamaica, British Guiana, and Trinidad, by Act XXI of 1844.

The Emigration Acts—XV of 1842, and XXI of 1844—which affix penalties to certain offences thereby created, are not here inserted, as being of local application only, and referring to Magistrates and Justices of the Peace at Madras, from which Port alone Emigration can take place.

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In exercising the authority conferred by the above Section, the Magistrate shall after holding such enquiry, as may satisfy him of the necessity of proceeding under this Act, issue an injunction, which, if practicable, shall be served personally on the parties concerned; but if such service shall be impracticable or very inconvenient, the injunction shall be notified by oral proclamation, and a written notice thereof shall be set up at such place or places as may be best adapted for conveying information to the parties concerned. And in case such injunction be not obeyed, the Magistrate may compel observance thereof by force, and punish disobedience by fine not exceeding 200 Rupees, or by imprisonment without labor for any period not exceeding one month, and if the Magistrate finds it necessary to incur expense in removing noxious or dangerous articles, or buildings, it shall be lawful for him to sell the same, or their materials by public auction, in order to defray the charge, delivering any surplus that may remain to the owner. And it shall be lawful for the Magistrate to compel, under the like penalty, the owners of tanks or wells adjacent to any public thoroughfare, to fence the same in such manner as to prevent danger to the public arising therefrom.—*Sec.* II, *Act* XXI, 1841.

It shall be lawful for any person affected by such injunction or written notice as is above described, if he shall object thereto, to claim, by written petition to be presented to the Magistrate within the period of ten days if reasonably practicable, if not, within the shortest reasonable further time from the receipt of such injunction or the publication of such notice, that a Jury or Punchayet may be appointed to try and decide the question; and the Magistrate shall, on receiving such petition, pass order thereupon for the appointment of a Jury or Punchayet, which shall consist of not less than five persons, whereof the President and one-half of the other Members shall be nominated by the Magistrate from the residents in the vicinity, and the remaining Members shall be nominated by the party petitioning. And the Magistrate shall suspend the further execution of the injunction or order, pending such enquiry, and be guided by the decision of the said Jury which shall be according to the opinion of the majority. Provided however that if the petitioner shall by neglect, or in any other way, prevent the appointment of such Jury or Punchayet, or if, from any cause the Jury so appointed shall not decide and report within a reasonable time, to be fixed in the order for their appointment, their functions shall cease from the date of the expiration of such period, unless they be continued by special order of the Magistrate, and if from any of the above causes no decision be made by a Jury or Punchayet, the Magistrate's order shall take effect as if not opposed.—*Sec.* III, *Act* XXI, 1841.

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All the proceedings of Magistrates under the authority of this Act shall be subject to the like appeal as other orders of Magistrates, according to the Regulations of the respective Presidencies.

This Act shall not be applicable within the local limits of Her Majesty's Courts of Justice.—*Sec.* IV—V, *Act* XXI *of* 1841.

The exclusive right of conveying letters by post for hire, from place to place within the Territories of the East India Company, shall be in the Governor General of India in Council.

Provided always, that it shall be competent to the said Governor General of India in Council, and to any authority thereunto empowered by the said Governor General in Council, to grant to any person or persons, a license permitting such person or persons to convey letters by post for hire from place to place within the said Territories, and that it shall be lawful for any person or persons having such a license to convey letters in conformity with the terms of such license.—*Sec.* II—III, *Act* XVII, 1837.

Whoever otherwise than under the authority of the said Governor General in Council, or in conformity with the terms of such a license as is aforesaid, knowingly conveys any letter by post for hire from place to place within the said territories, or receives any letter or packet of letters, in order to such conveyance, or delivers any letter according to its direction knowing the same to have been so conveyed, or is accessary to such conveyance, receipt or delivery, shall be punished with fine not exceeding Fifty Rupees for every letter so conveyed, received or delivered.—*Sec.* V, *Act* XVII, 1837.

No packet of the description mentioned in Table 2 of Schedule A, shall contain any writing whatever other than writing which is necessarily part of the documents which such packet is stated to contain, by attestation on the cover of such packet, and whoever shall send any such packet by the Government Post, knowing that it contains any writing not necessarily part of the documents which such packet is stated to contain by attestation on the cover, shall be punished with a fine of Fifty Rupees.

No packet of the description mentioned in Table 3 of Schedule A, shall contain any writing whatever, except the direction on the cover, and whoever shall send any such packet by the Government Post, knowing that it contains any writing other than the direction on the cover, shall be punished with a fine of Fifty Rupees.—*Sec.* IX—X, *Act* XVII, 1837.

When any Vessel arrives by sea at any place within the said territories, at which there is a Government Post Office, the Commander of such Vessel shall, as speedily as possible, cause every letter and packet on board of such Vessel, which is directed to

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that place, and which was not specially entrusted for separate delivery, to be delivered either at the Post Office, or to some Officer of the Post Office authorized to receive the same; and if there be on board any letter or packet directed to any other place, and not specially entrusted for separate delivery, the said Commander shall, as speedily as possible, report the same to the Post Master General or Post Master of the place at which he has arrived, and shall act according to such directions as he may receive from such Post Master General or Post Master: and the receipt of such Post Master General, or Post Master shall discharge such Commander of all responsibility in respect of such letter or packet.

Every Commander of a Vessel who shall wilfully disobey any of the directions contained in the preceding Section, shall be punished with fine not exceeding 1,000 Rupees.—*Sec.* XV—XVI, *Act* XVII, 1837.

The Commander of every Vessel leaving any place in the said territories by sea, shall receive on board of such his Vessel every letter and packet which he shall be required to receive by any Officer of the Post Office, and shall sign a receipt for such letters and packets; and every Commander of a Vessel who shall wilfully disobey any direction of this Clause shall be punished with a fine not exceeding 1,000 Rupees.—*Sec.* XX, *Act* XVII, 1837.

All fines incurred under any of the preceding provisions of this Act, may be levied on conviction before any Magistrate or Justice of the Peace, or before any person exercising the powers of a Magistrate; provided always that no person not a Post Master General or Post Master, shall be competent to institute any prosecution for any violation of any of the preceding provisions of this Act.—*Sec.* XXXII, *Act* XVII, 1837.

Whoever being in the employ of the Government in the Post Office Department, or being in the employ of any person or persons who may contract with the Government to convey letters or packets by Post for hire, and being entrusted to receive money for postage duty, shall fraudulently appropriate the same, shall be punished, on conviction before a Magistrate, with imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to fine.

Whoever being in such employ, shall fraudulently put any wrong mark on any letter or packet, or shall fraudulently alter or cause to disappear any mark which is on any letter or packet, shall be punished, on conviction before a Magistrate, with imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to fine.

Whoever being in such employ, and being entrusted with the

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preparing or keeping of any document, shall, with a fraudulent intention, prepare that document incorrectly, or alter that document, or secrete or destroy that document, shall be punished, on conviction before a Magistrate, with imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to fine.

Whoever being in such employ, puts any letter or packet into the Wallets of the Post Office, intending thereby to defraud the Government of the postage duty on such letter or packet, shall be punished, on conviction before a Magistrate, with imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to fine.—*Sec.* XXIV—XXVII, *Act* XVII, 1837.

Except as hereinafter is mentioned, if any person wilfully certify or cause to be certified by writing on any letter, cover or packet delivered at any Post Office for conveyance by Post, what is not true in respect of such letter or packet, or in respect of its contents, for the purpose of defrauding the Post Office Revenue, every such person shall on conviction be subject to a fine of 50 Rupees for every such offence.—*Sec.* V, *Act* XX, 1838.

Whoever shall send, or cause to be sent by the Government Post, any packet under the provisions of this Act of the description mentioned in Table 2 of Schedule A, Act No. XVII, of 1837, which shall contain any writing whatever other than writing which is necessarily part of the documents which such packet is stated to contain by attestation on the cover of such packet, knowing that it contains any writing not necessarily part of the documents which such packet is stated to contain by attestation on the cover, shall be punished with a fine of 50 Rupees.

Whoever shall send, or cause to be sent by the Government Post, under the provisions of this Act, any packet of the description mentioned in Table 3 of Schedule A, Act No. XVII, of 1837, which shall contain any writing whatsoever except the direction on the cover, knowing that it contains any writing other than the direction on the cover, shall be punished with a fine of 50 Rupees.—*Sec.* VI—VII, *Act* XX, 1838.

All fines incurred on account of letters or packets sent by the Letter Post, or by the Bhangee Post in contravention of the provisions of Sections IX and X of Act XVII of 1837, as well as all fines by this Act authorized to be imposed, shall be demanded from the parties liable thereto by notice in writing from the Post Master General, or from any Post Master, and if not paid upon such demand, the same shall, upon conviction of the offender before any Magistrate for the place

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where the party charged may be residing, be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand of such Magistrate. And if upon the return of such warrant, it shall appear that no sufficient distress can be had thereon, then it shall be lawful for any such Magistrate, by warrant under his hand and seal, to cause such offender or offenders to be committed to prison, there to remain for the space of two calendar months, unless such fines, and all reasonable charges attending the same, shall be sooner paid and satisfied.—*Sec.* VIII, *Act* XX, 1838.

All persons whatsoever, whether generally amenable to the Courts of the East India Company, or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any Zillah or City Magistrate, Joint Magistrate, or other Officer under a Magistrate empowered to try criminal cases, or any superior or inferior Court, Civil or Criminal, of the East India Company, shall be liable to be fined, by the authority whose proceedings are obstructed, to any amount not exceeding 200 Rupees, or in case such fine be not paid to be imprisoned for any period not exceeding one month. Provided that from the award of punishment in such cases an appeal shall lie, if preferred within one month, to the authority, Civil or Criminal, appointed by Law to hear appeals in all other cases from the decisions of the Officer by whom the fine was imposed; and provided also that notwithstanding any thing in this Act, it shall be lawful to indict any person amenable to Her Majesty's Supreme Courts, as for a misdemeanor in any of the cases aforesaid sustainable before this Act, if no proceeding shall have been had against the offender in the Court where the offence was committed, but not otherwise.—*Act No.* XXX *of* 1841.

No rights arising out of an alleged property in the person and services of another as a slave, shall be enforced by any Civil or Criminal Court, or Magistrate within the territories of the East India Company.

Any act which would be a penal offence if done to a free man, shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.—*Sections* II *and* IV, *Act No.* V *of* 1843.

No person shall, within the territories subject to the East India Company, publicly or privately, keep any office or place for the purpose of drawing any Lottery not authorized by Government, or shall have any such Lottery drawn, or shall knowingly suffer any such Lottery to be drawn in his or her house; and any person

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so offending shall for every such offence, upon conviction before a Justice of the Peace, or Magistrate, be punished by fine not exceeding 5,000 Rupees.

No person shall, under any pretence, device, or description, whatsoever, agree to pay any sum, or to deliver any goods, or to do, or forbear doing, any thing for the benefit of any person, whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure, in any such lottery, or shall publish any proposal for any of the purposes aforesaid; and any person offending in any of the matters mentioned in this Section shall for every such offence, upon conviction before a Justice of the Peace or Magistrate, be punished by fine not exceeding 1,000 Rupees.

Every fine which shall be incurred under the provisions of this Act, shall be applied one half to the use of Government, and the other half to the use of the informer or informers.—*Sec.* II, III, IV, *Act* V, 1844.

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# CRIMINAL COURTS,

## REG. X of 1816, &c.

A Regulation *for constituting Criminal Judges of the respective Zillahs, and for defining their powers.*

II. Criminal Judges, previous to entering upon the duties of the office, shall make and subscribe the following declaration before the Governor in Council, or any person whom he may commission to administer it:

I, A. B., appointed ———— of the Zillah of —————, solemnly declare, that I will act with impartiality and integrity, and will not exact or receive, nor knowingly allow any other person to exact or receive, directly or indirectly, any fee, reward, or emolument whatsoever, in the execution of, or on account of any matter relating to the duties of my office, excepting such as the orders of the Governor in Council do, or may expressly authorize; and that I will perform the duties of my office according to the best of my knowledge, abilities and judgement, according to the Regulations and Laws that have been, or may be enacted by the Legislature.

Principal Sudder Ameens, shall have Criminal Jurisdiction as hereunder provided.

Every Principal Sudder Ameen, previously to entering on the duties of his office, shall make and subscribe before the Governor in Council, or before any person whom the Governor in Council may commission to administer it, a similar declaration to that which is directed by Section II, Regulation X, 1816, to be made and subscribed by Criminal Judges.—*Sec.* II—III, *Reg.* VIII, 1827.

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Reg. X, 1816. *Criminal Judges.*—The term "Criminal Judge" will for convenience, be generally used to designate the functionaries presiding in the lower Courts, whether Subordinate Judges, Principal Sudder Ameens, or Sudder Ameens—where necessary, the particular office will be expressed.

Reg. VIII, 1827. *Principal Sudder Ameen.*—No person, by reason of place of birth, or by reason of descent, is incapable of holding this office, or that of Sudder Ameen; and if he be a British born subject of the Crown, or a descendant of such, he is liable to the same proceedings, as well Criminal as Civil, and amenable to the jurisdiction of the same tribunals, as if he were not of British birth or descent, by Act XXIV of 1836.

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Principal Sudder Ameens shall exercise within the limits assigned to their local jurisdiction, the full power and authority of Criminal Judges, and in all matters relating to the discharge of their functions, shall be guided by the provisions of Regulation X, 1816, and of such other Regulations as have been, or may hereafter be enacted for the guidance of Criminal Judges: provided always that they shall not have jurisdiction over any European or American.

Europeans and Americans against whom there is evidence of having been concerned in any crime or misdemeanor, shall be sent before the Subordinate Criminal Judge, or Magistrate as the case may require; or security shall be taken for their appearance.—*Sec.* IV—V, *Reg.* VIII, 1827.

It shall be lawful for Magistrates, under the Government of the Presidency of Fort St. George, to send persons for trial, committal, or confinement, to Principal Sudder Ameens, any provision of any Regulation to the contrary notwithstanding.

Provided always, that it shall not be lawful to send any European or American, for such purpose, to a Principal Sudder Ameen; but that Magistrates shall send Europeans and Americans, for trial, committal, or confinement, to the Subordinate Criminal Judges, as heretofore; *or, where the Criminal Court is presided over by a Principal Sudder Ameen, to the Session Judge—Sec.* XLIII, *Act* VII, 1843.—*Sec.* I—II, *Act* XXXIV *of* 1837.

*First.*—The Criminal Judges are hereby authorized to employ the Sudder Ameens in the investigation and decision of criminal cases. In the investigation and determination of such cases, they shall be guided by the rules laid down for the observance of Criminal Judges in similar cases, and shall exercise the powers conferred upon those officers by the Regulations, provided that cases, committable for trial before the Session Court, shall not be cognizable by Sudder Ameens: provided also, that they shall not have jurisdiction in cases where an American or European is concerned, nor over the offences specified in Regulation III, 1819.

*Second.*—Previous to the execution of the duties of their office, Sudder Ameens shall make and subscribe before the officer presiding in the Criminal Courts, to which they are attached, a solemn declaration according to the form prescribed in the Appendix to this Regulation.—*Sec.* II, *Reg.* III, 1833.

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Sec. IV, Reg. VIII, 1827. *Shall not have jurisdiction, &c.*—Not applicable to European Principal Sudder Ameen at Cochin—*see* Sec. XLVII, Act VII, 1843.

Sec. II, Reg. III, 1833. *Form prescribed.*—The same, *mutatis mutandis,* as in Section II.

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VI. The special jurisdiction of the Criminal Courts of the several Zillahs *is to be exercised within the limits assigned to them by the order in Council by which they are constituted (Act* VII, 1843*:)* provided however, that the Criminal Judges be not considered to have any jurisdiction or authority whatever in the town of Madraspatnam, or any places adjacent, within the limits of the jurisdiction of the Supreme Court of Judicature at Madras.

VII. The Criminal Judges,*—and Magistrates—Sec.* LIV, *Act* VII, 1843—are hereby empowered in all cases of conviction before them, of a criminal offence punishable under the Mahomedan law and the Regulations, for which the penalties authorized by Sections XXXII and XXXIII, Regulation IX, 1816, may appear insufficient, or to which the rules referred to may not be expressly applicable, and for which a more severe punishment than six months imprisonment with 150 lashes, or a fine of two hundred Rupees may not have been especially prescribed—in which case the prisoner, if there appear grounds for it, must be brought to trial before the Session Court—to pass sentence of imprisonment not exceeding six months, with corporal punishment not exceeding 150 lashes with a cat-of-nine tails, in cases of theft, or in other cases, with a fine not exceeding two hundred Rupees, commutable, if not paid, to a further period of imprisonment not exceeding six months, so that the entire period of imprisonment under the sentence of a Criminal Judge, *or Magistrate*, shall in no instance exceed one year.

The cat-of-nine tails to be used, shall be invariably supplied from the stores of Government; and no other cat-of-nine tails shall be used but such as shall be so supplied; nor shall any additional knot be tied, nor any new material introduced, nor any alteration made in any cat-of-nine tails in use, by way of repair or on any pretence whatever; and any Native Officer offending herein, shall be liable to be fined at the discretion of the Criminal Judge or Magistrate to whichsoever he may be subordinate.—*Sec.* V, *Reg.* VIII, 1828.

*First.* It shall be competent to the Magistrates, and Criminal Judges, to adjudge at their discretion, solitary imprisonment in all cases cognizable by those Officers respectively.

*Second.* Solitary imprisonment shall be enforced by confining the prisoner in a room well ventilated, where no communication

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Sec. VI. "For Order in Council" *see Fort St. George Gazette* 28th July 1843, No. 1346, page 617. *Limits.*—For these *see* Sec. XII, Reg. II of 1802.

Sec. VII. For extension of these powers, in the case of Criminal Judges, *see* Sec. III, Reg. VI of 1822. Corporal punishment, under this provision of the law, can only be awarded in cases of theft.—*F. U.* 11*th Feb.* 1835, *V. M. No.* 15.

Females are exempted from stripes by Reg. II of 1833, which *see* at page 41, but they may, if deemed necessary, be placed in irons.

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can be had with any person whatever; which room shall be opened only in order to clean it, and supply the prisoner with food—provided, however, that when the Medical Officer shall consider the removal of such prisoner to the hospital to be requisite on account of his health, he shall be so removed for the necessary period. —*Sec.* IV, *Reg.* XIII, 1832.

VIII. The Criminal Judge of the Zillah shall not receive or take cognizance of any criminal charge or information, except such as may be brought before him by a Magistrate, or some Police Officer under his authority; provided however, that this restriction shall not be considered as applicable to cases in which an European British subject shall be a party.

*First.* In modification of the provisions of Section VIII, Regulation X, 1816, it is hereby declared that the Criminal Judges shall have primary cognizance of cases of gross and culpable neglect, on the part of peons in charge of prisoners, whereby they may be enabled to effect their escape, and, on conviction, may sentence the offenders to imprisonment not exceeding six months.

*Second.* Where connivance on the part of such peons may be ascertained, they shall be committed for trial before the Session Court; and, on conviction, be sentenced to imprisonment for not less than two, nor more than five years.—*Sec.* XI, *Reg.* XIII, 1832.

In modification of Section VIII, Regulation X, 1816, the Criminal Judge, without the intervention of the Magistracy, shall have primary cognizance of all charges, *of stealing or injuring judicial records belonging to any European or Native tribunal*, whether the same are brought forward by individuals, or by the European or Native Officers superintending the said Courts.—*Cl.* 2, *Sec.* II, *Reg.* VIII, 1829.

*First.* Any person, who shall knowingly detain, buy, or exchange, or otherwise receive from any Soldier or deserter, Native as well as European, or any other person, upon any account or pretence whatsoever, any Arms, Clothes, Caps, or other furniture, belonging to the East India Company, or furnished and provided for the use of any troops or forces, Native as well as European,

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Sec. VIII. *Provided, &c.*—Or to cases of perjury, subornation of perjury, or forgery, sent to him by superior Courts, under Section V and VI, Reg. VI of 1811, *see C. O.* 28*th Oct.* 1823 *B, and* 12*th Feb.* 1834, *entered thereunder.*—Or to like cases falling under his own judicial view.—Or to cases of perjury or subornation of perjury, sent to him under Sec. III, Reg. VIII of 1829, by the authorities therein mentioned, *which see incorporated with Reg. VI*, 1811.—Or to offences committed by prisoners in the jails under their charge, *see C. O.* 23*d June* 1828.—Or to cases in which prisoners forwarded to the Criminal Court by competent authority may escape, *F. U.* 16*th Oct.* 1828.—Or to cases in which absent parties may appear implicated in cases before him, *see C. O.* 10*th Aug.* 1833.

Cl. 2, Sec. II, Reg. VIII, 1829. *See* the first Clause of this Section at page 36, under which the offence is punishable by the Session Courts.

serving with the forces of the said Company, or any meat, drink, beer, or other provision, provided under any Regulations relating thereto, or any such articles, belonging to any such Soldier or deserter, as are generally deemed regimental necessaries, according to the custom of the Army, being provided for the Soldier and paid for by deductions out of his pay, or shall cause the colour of any such clothes to be changed, shall on conviction before the Criminal Judge, within the limits of whose local jurisdiction the offence may have been committed, be sentenced for every such offence, to pay a fine of forty Rupees.

*Second.* Any person, who shall buy or receive any grain, hay, straw, or other forage, provided for the use of any horse, or horses, belonging to the Company's Service, from any trooper, or other Soldier, Native as well as European, knowing him to be such, or shall move, procure, counsel, or solicit any such trooper or other Soldier, knowing him to be such, to sell or otherwise dispose of any such grain, hay, straw, or other forage, as aforesaid, shall on conviction before the Criminal Judge, within the limits of whose local jurisdiction the offence may have been committed, be sentenced for every such offence to pay a fine of forty Rupees.

*Third.* Upon payment of the fines adjudicable under the provisions of Clauses first and second of this Section, one moiety thereof shall be given to the informer; and the said fines shall be commutable, if not paid, to imprisonment for three months.—*Sec.* II, *Reg.* XIV, 1832.

In all cases where an accused or suspected person has refused or neglected to deposit security according to the Collector's requisition, as provided in Section VII, Regulation IX, of 1822; and in all cases where a judgement has passed under the provisions of Clause first, Section V, of that Regulation; as well as where a defaulter has failed to satisfy the public demand against him made under the provisions of Section VI of that Regulation; it shall be competent to a Collector to issue a proclamation, requiring all persons holding property belonging to the defaulter to surrender the same to him within a specified period, not being less than fifteen days; after the publication of such proclamation, and after the expiration of such specified period, any person who may be convict-

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Sec. VII, Reg. IX, 1822. Under Reg IX of 1822, Reg. VII of 1828, and Act XXXVI of 1837, Collectors, their Subordinates, and Assistants, have primary cognizance and certain powers of punishment, in cases of corrupt exaction, unauthorized collections, embezzlement of public property, and falsification or other injury of Revenue accounts, or other accounts relating to any public property—they have power to summon and examine witnesses, and in cases of their not attending, or refusing to give evidence, may report them to the Zillah Judge, who is authorized under Cl. 2, Sec. III, Reg. IX of 1822, to proceed as though they had acted similarly toward his own Court. The powers of the Criminal Courts in such cases, are specified in this and the following Section.

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ed before the Criminal Judge, (who is hereby empowered to take cognizance of such cases,) of having fraudulently concealed or collusively received such property, shall be sentenced by him to pay a fine not exceeding three times the amount of the value of the property so fraudulently concealed or collusively received by such person, and to be imprisoned until such fine be paid; the Criminal Judge shall levy the amount of the fine by the usual process, and in the event of the full amount of the fine not being realized, shall commit the offender to confinement in the Zillah jail; provided however, that the period of confinement under this Section, shall in no case exceed twelve calendar months.—*Sec.* VII, *Reg.* IX, 1822.

*First.* Criminal Judges are hereby authorized to take cognizance of such cases as Collectors may bring before them, where any of the persons mentioned in Clause third of Section II, Regulation IX, of 1822—may be accused of having committed any of the offences enumerated in Clause second of the same Section; and on conviction, to sentence such persons to imprisonment, in no case exceeding one year.

*Second.* Criminal Judges are likewise authorized to take cognizance of all cases where any person shall be charged with having given a bribe to any public Officer, or servant on the Collectors' establishment, or any head inhabitant or other village Officer; and on conviction, to sentence such person to pay a fine not exceeding twice the amount of the bribe proved to have been paid, and in default of payment, to suffer imprisonment for a period not exceeding one year, or until the fine be paid.—*Sec.* XVII, *Reg.* IX, 1822.

*First.* In cases of an aggravated nature, brought before a Criminal Judge under the foregoing Section, if he shall be of opinion that the sentence which he is authorized to inflict is not adequate to the punishment of the offence, he shall commit the party to take their trial before the Session Court.

*Second.* The Session Courts are hereby authorized, on the conviction of any persons brought before them, of any of the offences enumerated in Clause second of Section II of this Regulation, to sentence the offenders to imprisonment for a period not less than one year, nor exceeding five years, and with or without hard labour as, in consideration of all the circumstances of the case, may seem proper.—*Sec.* XVIII, *Reg.* IX, 1822.

IX. *First.* Upon a prisoner being brought before the Criminal

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Sec. IX. For course of proceeding in procuring attendance and evidence of witnesses, *see* Sec. II, Reg. I, 1824, at page 21; under which parties not attending on summons, or when attending refusing to give evidence, &c., may be fined to the extent of 500 Rupees, and committed to custody while they remain contumacious.

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Judge, he shall enquire into the circumstances of the charge, and examine the prisoner and the complainant, and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and commit their respective depositions to writing. The complainant and the witnesses shall be examined upon oath, or on a solemn affirmation, but the prisoner shall not be required to swear to, or affirm the truth of his deposition; after this enquiry, if it shall appear to the Judge that the crime or misdemeanor charged against the prisoner was never committed, or that there is no evidence of his having been concerned in the committing of it, the Judge shall cause him to be forthwith discharged, recording his reasons for releasing him, and submitting them to the Session Court.

*Second.* If on the contrary, it shall appear to the Judge that the crime or misdemeanor was actually committed by the prisoner, and if it should be punishable by the Judge under Section VII of this Regulation, *or the provisions of any other enactment*, he shall adjudge such punishment as he may deem proper.

*Third.* If the crime or misdemeanor be not punishable by the Judge, and if it shall appear that it was actually committed, and that there is evidence of the prisoner having been concerned in the perpetration of it, the Judge shall commit him to prison, or hold him to bail (according as the offence may be bailable or not), to take his trial before the Session Court; and shall bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence.

*Fourth.* All bail bonds for prisoners released upon bail, and the recognizances required to be taken from prosecutors and witnesses, shall be for a specific sum, the amount of which shall be determined by the Judge upon a due consideration of the case, and the circumstances and situation in life of the parties, and shall contain a clause declaring the amount forfeited to Government, in the event of the condition of it not being performed.

X. The Criminal Judges are to be careful to ascertain from the complainant, and to record upon their proceedings, on what day of the month, in what year, and at what time of the day or night the act complained of was committed; when a prisoner confesses before them the crime or misdemeanor with which he may have been accused, or confirms any former confession that he may have

Sec. IX, Cl. 3. *Bind over, &c.*—This, under the new system, introduced by Act VII of 1843, is now only necessary when from any peculiar circumstances, such as a vacancy in the Session Court, unavoidable delay, &c., the trial may not be commenced immediately.

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made of his having committed such crime or misdemeanor, the Judges are to be careful, in cases referrible to the Session Court, to have such confession, or confirmation of a former confession, witnessed by as many creditable persons, who may be present at the time it may be made, as the Mahomedan law requires to give it validity, and to cause such witnesses to be in attendance before the Session Court; all confessions made by prisoners shall be free and voluntary, and notwithstanding such confessions, the Judges are invariably to cause the witnesses to the commission of the crime or misdemeanor alleged against the prisoner, to attend, that they may be examined before the Session Court in the same manner as if the prisoner had denied the charge.

*Second.*—When a Criminal Judge shall be of opinion, from any particular circumstances connected with the case of a prisoner forwarded to him by a Tahsildar, under Clause fourth, Section XXVII, Regulation XI, 1816, that it is necessary, in furtherance of the ends of justice, that such prisoner should be tried, or committed for trial, by some other Court; he shall report that opinion together with the grounds of it, and the circumstances of the case, to the Court of Foujdaree Udalut, and that Court shall submit the same, with their opinion, to the Governor in Council.—*Sec.* II, *Reg.* III, 1827.

XI. In all cases of trial before the Session Court, if the admission of bail have not been prohibited by the Regulations, and the bail tendered shall appear sufficient for securing the appearance of the party accused, he shall be admitted to bail, until sentence be passed upon the charge against him; moreover in special instances wherein the Session Court on report from the Criminal Judge, or on other satisfactory information before it, may deem it just and proper to admit to bail a person charged with an offence not bailable under the general provisions contained in the Regulations, that Court is declared competent to instruct the Judge to accept sufficient bail, instead of keeping the accused in confinement whilst the charge against him is under trial. The Session Court may likewise in all bailable cases wherein the bail required by the Judge shall appear excessive, direct the Judge to receive such bail as may be deemed sufficient to answer the purpose intended by it.

XII. The bail to be taken under the preceding Section, as well as in all cases of persons being held to bail for trial before the Session Courts, shall be according to the Form prescribed in No. 3 of the Appendix to this Regulation.

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Sec. XII. *Form prescribed.*—This form, and others adverted to, being in use, and well known in every Court, it has not been thought necessary to insert them in an appendix.

XIII. In all cases of a prisoner being committed, or held to bail for trial before any Session Court, the Criminal Judge who may order him to be so committed or held to bail, shall immediately after passing such order, question the prisoner whether he wishes to have any witness or witnesses examined in his defence before the Session Court, and in the event of his answering in the affirmative, shall cause a list of the witnesses named by the prisoner, specifying their designations, and places of abode, to be taken down and recorded upon his proceedings; or in the event of the prisoner's replying in the negative, shall cause his reply to that effect to be recorded on his proceedings, for the information of the Session Court.

XIV. In the event of any person whether committed or held to bail for trial before the Session Court, desiring the examination of any witness, or witnesses upon his trial, although the same may not have been named by him at the time of his being committed, or held to bail, the Session Judges are to be careful to cause the attendance of such witnesses, as well as of those before named, at the trial of the party who may desire their examination.

*First.* Whenever a prisoner who may confess before the Criminal Judge the offence with which he is charged, or may confirm a former confession thereof, shall require witnesses to attend on his behalf before the Session Court, it shall be discretionary with the Criminal Judge to cause the attendance of any such witnesses, or not, according as it may or may not appear, from the nature of the case, that it admits of palliatory evidence.

*Second.* In all other cases, when a prisoner may desire the attendance of more than two witnesses on his behalf, the Criminal Judge is hereby authorized to question the prisoner as to the facts which he wishes to establish by their testimony. Whenever it may appear that the testimony required is irrelevant to the prisoner's defence, the Criminal Judge shall not comply with the requisition of the prisoner; and when several distinct facts are required to be established, which may be material to the defence, the Criminal Judge shall have authority, if he see proper, to summon only two witnesses to each point.

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Sec. XIII. This course is to be followed by the Criminal Judge under the present, as under the former system; *see* C. O. 30th April, 1846.

Sec. XIV. *Session Judges are to be careful, &c.*—In the original "*Criminal Judges*"—but it has now become the duty of the Session Judge under Sec. XXX, Act VII of 1843, and on this point *see* also the C. O. 30th April, 1846.

Sec. II, Reg. II, 1822. This Section contemplates the Criminal Judge as the only summoning officer, and is still applicable to him so far as he may be concerned in summoning the witnesses for the defence under Section XIII, but its principles now serve also as a guide to the Session Judge, upon whom that duty now generally devolves.

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*Third.*—The Criminal Judge shall record on his proceedings the grounds on which he may exercise the discretion, vested in him by this Regulation, of refusing to summon a witness or witnesses on behalf of a prisoner to appear before the Session Court.—*Sec.* II, *Reg.* II, 1822.

XV. All examinations taken before the Criminal Judge are to be written on separate papers, signed by the deponents, attested by the signature of the Judge, and arranged according to their respective dates.

XVI. All examinations and depositions are to be taken and written in the language in which the deponents may desire to have the same recorded.

*First.*—In every instance in which security may be hereafter required, whether by the Magistrates, Criminal Judges, the Session Courts or the Foujdaree Udalut, the amount of security, the number of sureties (to be fixed at the discretion of the Officer or Court requiring the security,) and the period of time for which the sureties are to be responsible, shall be fixed and determined.

*Second.*—The amount of such security shall never be excessive; but shall be always fixed with reference to the situation and circumstances in life of the person from whom it is demanded, as well as to the cause for requiring it; and shall in all cases be such as it would be equitable to enforce in the event of a breach of the engagement.

*Third.*—The period of time during which persons may be made liable to detention in custody, on failure to furnish the security required from them, shall hereafter be specifically fixed in every instance, except in the cases hereinafter particularly mentioned.—*Sec.* VII, *Reg.* VI, 1827.

*First.*—In all cases brought before a Criminal Judge, where adequate proof for conviction of a specific offence may not be adduced against a prisoner, but he shall appear to be under strong suspicion of any act of criminality, it shall be competent to the Criminal Judge to direct that such prisoner be detained in custody, until he shall give sufficient security for his future good behaviour and appearance when required.—*Sec.* IV, *Reg.* II, 1822.

*First.*—Whenever the Criminal Judges, under the authority vested in them by Clause first, Section IV, Regulation II, 1822,

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Sec. XV. *Separate Papers.*—Under the new system—Sec. XXIX, Act VII of 1843—this seems unnecessary; its requirements are fulfilled, and much time and labour saved, by appending to the examination taken before the Police or Magistracy, a single question and answer, expressing that the Deponent, having heard the same read, confirms it on oath, or solemn affirmation, the same being of course duly signed and attested.

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may require security, they shall, in all cases in which they may deem it safe so to do, provide in their order for the release of the prisoner at the end of a definite period, not exceeding twelve months.

*Second.*—It shall not be necessary for the Session Judge, to revise the proceedings of the Criminal Judge, in the cases referred to in the preceding clause, except on petition presented by the prisoners, when the Session Judge is empowered and directed to call for the proceedings, and on his own authority to annul, modify, or confirm, the orders of the Criminal Judge.

*Third.*—In all cases in which a Magistrate or Criminal Judge from the evidence adduced before him, shall be of opinion, that the prisoner is by habit a robber, burglar, or thief, or a vender or receiver of stolen property, knowing the same to have been stolen, of a character so dangerous, desperate, or irreclaimable, as to render his release, without security, at the expiration of the limited period of twelve months above specified, hazardous to the community, he shall record his opinion to that effect, with an order specifying the amount of security, which should in his judgment be required from the prisoner, as well as the number of sureties and the period for which the sureties should be responsible for the prisoner's good behaviour.

*Fourth.*—If the prisoner shall not furnish the security so required, the whole of the proceedings shall be laid before the Session Judge, who, after examining them and requiring any further evidence which he may judge necessary, shall be competent of his own authority to pass orders on the case, either confirming, modifying, or annulling the orders of the Magistrate or Criminal Judge as he may deem proper and equitable.

*Fifth.*—In all such cases, if the Session Judge shall not think it safe to direct the immediate discharge of the prisoner, he shall fix a limited period for his provisional detention in the event of his not giving the security required from him, which period shall never exceed three years, except in the cases specified in the following Section.—*Sec.* VIII, *Reg.* VI, 1827.

*First.*—Whenever the Session Judge, from the proceedings before him in the cases referred to in Clause fifth of the preceding Section, shall consider the prisoner to be of a character so notoriously bad and dangerous, as to render his release, without substantial security, evidently unsafe and improper, it shall be competent to him to order the indefinite confinement of the prisoner on default of giving the requisite security.

*Second.*—In these cases the Session Judge shall nevertheless fix the amount of the security to be required from the prisoner, and

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shall provide in his order, that if the prisoner shall not be able to furnish the security required, within the period of three years from the date of such order, the prisoner in question shall be again brought up before the Session Judge, whose duty it will be, after examining the proceedings, and making any further inquiries he may judge necessary, to determine whether the prisoner shall then be released, or whether he shall be again remanded, either on the same terms as before, or on any modified terms favourable to the prisoner.

*Third.*—With a view to encourage respectable individuals to become sureties for prisoners of the description alluded to in the foregoing Clauses of this Section, the period for which the sureties are to be responsible for the good behaviour of the individuals, shall be in all cases limited to three years; subject however to the condition, that the sureties, at the expiration of that period, shall be bound to deliver up the individuals to the Criminal Judge.

*Fourth.*—When an individual shall be surrendered by his sureties under the foregoing rule, the Criminal Judge shall ascertain whether the former sureties are willing again to become responsible for the future good behaviour of the prisoner, for a further period not exceeding three years; and, in the event of the sureties being willing to become again responsible for the conduct of the prisoner, the Criminal Judge shall accept the security, and release the prisoner on the same terms as before.

*Fifth.*—If the former sureties shall decline to become again responsible for the prisoner, and the prisoner shall be unable to furnish any other sufficient security, the Criminal Judge shall detain him in custody, and the prisoner is again to be brought before the Session Judge, for such further orders as he may consider it proper to pass in the case.—*Sec.* IX, *Reg.* VI, 1827.

*First.*—The Criminal Judges are empowered to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for good behaviour, whether by their own orders, or by those of any other person discharging the functions of a Criminal Judge, provided they shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

*Second.*—Whenever a Criminal Judge may, for whatever reason, be of opinion that a prisoner confined under requisition of security for good behaviour by order of the Session Court, or of the Foujdaree Udalut, can be safely released without such security, he shall make an immediate report of the case, with his opinion, for the orders of the Court which may have required the prisoner to furnish security previously to his release.—*Sec.* XI, *Reg.* VI, 1827.

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*First.*—It is hereby declared that sureties for the peace, and sureties for good behaviour, shall at all times be discharged from further responsibility, on delivering up to the proper Magistrate or Police Officer, the persons for whom they have become responsible; and they shall not be made answerable for the amount of the security-bond, in cases wherein they shall give timely information to the Magistrate, that the persons for whom they have become sureties have taken to bad courses, and shall use every exertion in their power for the apprehension and surrender of such persons.

*Second.*—Criminal Judges are hereby directed to transmit to the Magistrates in their respective jurisdictions, lists of the persons from whom they may take security for good behaviour, whether by their own authority, or under directions from the Session Courts, or Foujdaree Udalut. The lists shall specify the names of such persons, and of their sureties, the amount of the security, and the period for which it is taken.

*Third.*—Individuals surrendered by their sureties, or re-apprehended by the Magistrate under this Section, shall be immediately forwarded to the Criminal Judge.—*Sec.* XII, *Reg.* VI, 1827.

*First.*—Persons confined on a requisition of security for appearance under Clause first, Section III, Regulation II, 1822, or on a requisition of security for good behaviour under Sections VIII, IX, and X of this Regulation, shall be subjected, at the discretion of the Criminal Judge, to compulsory labour, suited in kind and degree, as well as may be, to their caste, age, strength and other circumstances. Provided always that persons confined under Clause first, Section III, Regulation II, 1822, or under Clause first, Section VIII of this Regulation, shall be made to work separately from convicts, and without irons; and that no person confined by direction of the Session Courts and Foujdaree Udalut, shall be made to work in irons, unless an order to that effect, to be issued only in the case of a bad or dangerous character, is contained in the warrant directing his detention in custody on default of security.

*Second.*—Any person apprehended in a Zillah different from that in which he has been accustomed to reside, and ordered to be detained in custody on a requisition of security, shall be removed to the jail of the Zillah in which his usual place of residence is situated, on his application to that effect, for the purpose of being enabled the more easily to furnish the security required.—*Sec.* XIII, *Reg.* VI, 1827.

XIX. The Criminal Judges are to deliver to the Session Court a Calendar.

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XX. The Calendar is to be accompanied with the Criminal Judges' proceedings on each charge, which shall contain the following vouchers, or as many of them, as from the nature and circumstances of the case may be requisite and procurable; with such other papers and documents as the Judge may have in his possession or judge necessary to be obtained for the information of the Session Court.

XXI. The following documents shall also be delivered if required by the Judges of the Session Courts.

XXIV. Session Judges are hereby declared competent on all occasions when it may appear necessary, upon petitions presented to them relative to the proceedings of any Criminal Judge, within their jurisdiction, to call upon the Judge for his proceedings on the case, and to pass such orders thereupon as they may deem proper and consistent with the Regulations.

XXV. In like manner the Court of Foujdaree Udalut are declared competent to call for the proceedings of any Session Court, or of any Criminal Judge, whenever it may appear requisite, and to pass such orders thereupon as that Court may deem just and proper.

XXVI. If the Criminal Judge shall commit any zemindar, independent talookdar, or other actual proprietor of land to be tried before the Session Court, he is to notify the commitment to the Collector of the Zillah, that if necessary, he may take measures to prevent any delay in the payment of the public revenue assessed upon the lands of the offender.

XXVII. The Jail of the Zillah shall be placed under the exclusive charge of the Criminal Judge of the Zillah, *unless the Criminal Court be constituted according to Regulation* VIII, 1827, *when the Zillah Jail shall be under the charge of the Session Judge. Sec.* XLVIII, *Act* VII, 1843.

XXVIII. The Criminal Judge shall visit the Jail at least once in every month, and redress all well founded complaints of ill-treatment, which may be preferred to him by the prisoners, against the Jailor, or any Officer having charge of them; he is to be particularly attentive to the health and cleanliness of the prisoners,

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Sec. XX. *The following Vouchers.*—The particular documents, &c. detailed in the original, have necessarily undergone so much change and modification since the introduction of the new system by Act VII of 1843, that it seemed better to omit the list altogether here, and state in a note upon the "Calendar"—which will be found among the "Forms and Statements"—of what documents the "Record" now transmitted with the Calendar actually consists.

Sec. XXI. *See* note on Sec. XX.

Sec. XXVII. By Act V of 1847, Officers in charge of jails, are required to give effect to sentences of Courts established by the Supreme Government in states or territories administered by British officers, yet not within the limits of Presidencies.

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and to see that the Surgeon of the station attends and administers to the sick.

XXIX. Separate apartments in the Jail shall be allotted for the following descriptions of prisoners.

1st. Prisoners under sentence of death.

2d. Prisoners sentenced to confinement by a Criminal Judge, by the Session Court, or the Foujdaree Udalut.

3d. Prisoners committed to take their trial before the Session Court.

4th. Prisoners sentenced to confinement by the Magistrates for petty crimes or misdemeanors cognizable by him. And as the crimes proved or alleged against the second and third descriptions of prisoners must be of different degrees of atrocity, the Criminal Judges are required to separate those who have been found guilty or accused of heinous crimes, from such as have been convicted of, or charged with crimes of less magnitude. They are likewise to separate the male from the female prisoners, so as to prevent their having any communication with each other, and the rules prescribed in this Section for keeping apart the several descriptions of the former, are to be considered applicable also to the latter. The Judges are further enjoined to endeavour to prevent drunkenness, gaming, and other immoralities being practiced in the Jails.

XXX. All complaints or charges, with the orders upon them, are to be recorded in the office of the Criminal Judge, in the English, and language of the district in which the Court may be held.

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Sec. XXIX. In many instances the classification herein prescribed, can be, from unavoidable circumstances, but partially carried out. Every officer, who has had charge of an Indian jail, must have felt the difficulties and obstacles which present themselves to the establishment of regular and improving discipline. Such functionaries will be familiar with the Report of the Committee on Prison Discipline, presented to the Governor General in Council on the 8th January 1838, but it may be not out of place here to insert the following extract from the proceedings of the Supreme Government thereon, of the 8th October 1838 :—

"Every reform of prison discipline is almost of necessity attended at the outset with extraordinary expense. To exchange the common herding of prisoners of all descriptions, for careful classification, to substitute a strict and useful industry for idleness or for a light and ill-directed labour, to provide that the life which is irksome shall not also be unhealthy, and that the congregation of the vicious shall not be a school of vice, are all objects, for the first approach to which, buildings must be erected, machinery formed, and establishments, and checks upon establishments, contrived, and in the perfect attainment and maintenance of which, great disappointment has, after every effort and expense, in many countries ensued. In no country is it likely that greater difficulty will be experienced than in this. For the mere locality of the prison, that which is healthy in one season, may become a pest house by a blast of fever or of cholera in another. For its form—the close yard which is adapted for classification, and is not unwholesome in England, would be a sink of malaria in India. For food, for labor, and for consort, there are habits, and an inveteracy of prejudice and of feeling bearing upon health, and almost upon life, opposing difficulties to the just management of prisons, such as are not elsewhere to be encountered ; and, superadded to all this, is the absence of fitting instruments for control and management, while it is principally upon a perfect tact and judgement, and an unwearying zeal, that the success of every scheme of discipline has been found to depend."

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Session and Criminal Judges, or Magistrates, who have charge of the public jails, shall be guided by the rules which have been prescribed by the Governor in Council, or Court of Foujdaree Udalut, for the better management of those jails; and by such rules for the same purpose, as may be hereafter sanctioned by the Governor in Council, and transmitted for their guidance by the Court of Foujdaree Udalut.—*Sec.* II, *Reg.* X, 1832.

Session and Criminal Judges, or Magistrates, who have charge of prisoners employed on the public roads, or other public works, shall in like manner be guided by any rules, for the treatment of such prisoners, which have been or may be hereafter transmitted to them by the Court of Foujdaree Udalut with the sanction of Government.

For the purpose of enabling the Session or Criminal Judges and Magistrates to maintain good order and discipline among the prisoners confined in the public jails, or other authorized places of confinement, and to enforce a due observance of the prescribed rules for the employment of the prisoners under their charge, they are hereby vested with authority to punish, on a summary inquiry, the offences specified in the following Section of this Regulation.—*Sec.* III—IV, *Reg.* X, 1832.

*First.*—A contumacious refusal to work, by any prisoner sentenced to hard labour, or though not so sentenced, who may be subject to labour, under any provisions in the Regulations, or under the discretion declared to be vested in the Officers in charge of the public jails, by the orders of the Court of Foujdaree Udalut, with respect to prisoners not exempted from labour by the sentences of the Criminal Courts, and not incapable of bodily labour from age, sickness, or other infirmity.

*Second.*—Wilful neglect and indolence in the performance of any prescribed work, by a prisoner subject to labour, as described in the above Clause, especially after previous admonition.

*Third.*—Wilful disobedience to any of the written rules for the observance of prisoners, and internal economy of a public jail, which may have been translated in the current language of the country, and suspended on a board, within the jail, for general information, as directed in the jail rules now in force.

*Fourth.*—Refractory behaviour by prisoners, such as resistance to the jailor, guards, and other public officers, in the regular discharge of their proper functions; abusive language to any such officers, and generally any culpable behaviour towards them, which may not involve a serious act of criminality, such as should be brought before the Session Court.

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*Fifth.*—Any other instance of disorderly conduct by a prisoner; such as riot, insurrection, attempt to escape, taking off or loosening or attempting to loosen, by filing, cutting, or otherwise, his own irons, or those of other prisoners, with a view to escape; conspiring with other prisoners for the purpose of insurrection or escape, or for any other criminal purpose; abusing or assaulting another prisoner, and generally any misconduct, committed by a prisoner, whilst in custody, which under the Regulations in force, may not be properly cognizable by the Session Court.—*Sec.* V, *Reg.* X, 1832.

*First.*—The powers vested in the Session, Criminal Judges, and Magistrates, for the punishment of the offences specified in the preceding Section, which on a summary inquiry, may appear to have been committed by any of the prisoners under their charge, are declared to be as follows.

*Second.*—In cases of contumacious refusal to work, or of wilful neglect and indolence in the performance of any prescribed work, within the first or second clause of Section V of this Regulation, the Session, Criminal Judge, or Magistrate, may cause the prisoner to be punished by stripes not exceeding 60 with a cat-of-nine tails; and in the instance of a prisoner's pertinaciously refusing to work, may likewise order his diet allowance to be reduced, in such degree as may be consistent with his support, until he shall perform the work required from him.

*Third.*—The offences specified in the third, fourth, and fifth Clauses of the preceding Section, shall be punishable, according to the nature and circumstances of the case, by stripes with a cat-of-nine tails not exceeding 150, or by close, and as far as practicable, by solitary confinement.—*Sec.* VI, *Reg.* X, 1832.

It shall not be necessary to make a detailed record of the evidence, or of any part of the proceedings held in the summary inquiries authorized by this Regulation, nor shall it be requisite to examine witnesses upon oath or solemn affirmation, except in cases of a serious nature, involving offences specifically provided for by the general rules in force for the administration of criminal justice. But a record shall be kept of every summary conviction, and punishment; stating the name of the prisoner, the offence charged against him, the substance of the evidence and conviction; or the personal view of the Session, Criminal Judge, or Magistrate, when the facts of the case may have taken place within his view;—and the punishment ordered, with the date of the order, to be signed by the Public Officer, by whom it may be passed. The record, so authenticated, shall be kept ready for the inspection of the Session Judge on his visiting the jail, that a reference may be made to it

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in the event of any complaints being preferred by the prisoners. Should the Session Judge see cause to disapprove the order of the Criminal Judge, or Magistrate in any instance, he will notice the same to him, with any instructions which may appear necessary, and may be consistent with the Regulations in force—*Sec.* VII, *Reg.* X, 1832.

*First.*—It shall be competent to the Governor in Council, by an order in Council, to confer upon Officers, other than those named in Regulation X, 1832, who may be placed in charge of convicts, the whole, or any part of the powers of punishment, created by that Regulation.

*Second.*—The Governor in Council will, at pleasure, restrict the nature and the degree of punishment adjudicable by the Officers mentioned in Clause first of this Section, within such limits, as may be deemed proper and expedient.—*Sec.* II, *Reg.* I, 1833.

In cases of a serious nature, involving offences specifically provided for by the general rules in force for the administration of criminal justice, the offenders shall be made over to the judicial Officer, from whose Jail they may have been transferred, to be dealt with according to law; and their offences shall be cognizable in the same manner, as if committed within the local Jurisdiction of such Criminal Court. Provided however that in extraordinary cases, when it may happen that the Criminal Court, from which the convicts were originally removed, is so distant as to make this arrangement inconvenient, it shall be competent to the Governor in Council to direct, that such offenders shall be made over to the nearest Criminal Court, who shall thereupon be empowered to deal with them, as with other offenders, under the provisions of the general Regulations.

The provisions of Section VII, Regulation X, 1832, shall be applicable to the Officers, specially vested with powers of punishment under the provisions of Section II of this Regulation.—*Sec.* III—IV, *Reg.* I, 1833.

XXXI. The officers in charge of jails are to pay the customary daily subsistence money to all prisoners from the time of their being delivered over to them, to the date of their discharge.

XXXII. The officers in charge of jails are to pay to all persons who may be released from jail, after an imprisonment of six months or upwards, calculating from the date of their sentences, and who shall appear to be in actual need of such assistance, a sum sufficient to maintain them for one month. The sum to be

Sec. XXXI. Or rather are authorised to expend it on their subsistence, as is now the general and certainly the most expedient practice.

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so paid to each individual, is to be regulated by his situation in life, but it is in no case to exceed five Rupees, and in every instance is to be confined as much within that amount, as may be consistent with the purpose for which the allowance is granted.

XXXIV. The provisions of Section XXXIX, Regulation IX, 1816, respecting the imposition and disposal of fines by the Magistrate, are hereby declared equally applicable to the office of Criminal Judge.

XXXVIII. Such cases as come under Sections XXIII and XXIV, Regulation I, 1812, which may be referred under Section XLV, Regulation IX, 1816, by the Magistrate to the Criminal Judge, shall be cognizable by him under the limitations with regard to punishment which are prescribed by the Sections above specified respectively.

XL. All persons hereafter appointed to the station of subordinate Judge, are required to take the prescribed oath of qualification to act as Justices of the Peace, within three months from the date of their appointment.

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Sec. XXXIV. That is to say the whole, or any part thereof, may be awarded in compensation to an aggrieved party.

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# CRIMINAL COURTS,

## REG. VI OF 1822, &c.

A REGULATION *for extending the powers of the Criminal Judges, and of the Session Courts, in the trial of persons charged with breaking into houses and other places of habitation, or into warehouses or other places used for the custody of property, with an intent to steal; or charged with theft, or with buying or receiving stolen property knowing the same to have been stolen; or charged with escape from jail or other place of confinement.*

II. *First.*—The Criminal Judges shall be guided by the following rules, whenever individuals may be apprehended and brought before them on a charge of having committed the offence of breaking into, or attempting to break into a dwelling house, tent, or other place of habitation, by night or by day, with an intent to steal; (but without open violence such as to constitute the crime of robbery by open violence as defined in Clause first, Section III, Regulation XV of 1803;) or with the offence of breaking into, or attempting to break into any warehouse, storehouse, or other building or place used for the custody or preservation of property, either by night or by day, with an intent to steal; (but without open violence;) or of being present, aiding and abetting in the commission of any of the offences above specified; or although not present, of having procured or caused the perpetration of any of those offences by hire, counsel or command; or of having in any manner confederated with the actual perpetrators of them, in pursuance of a preconcerted plan.

*Second.*—If the perpetration of any of the offences enumerated in the preceding Clause, (not amounting to the crime of robbery by open violence) shall be accompanied with wounding, burning, corporal injury, or other aggravating act of personal violence; or if the prisoners, or any of the prisoners, concerned in the offences described in the preceding Clause, shall appear to have been be-

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Sec. II, Cl. 2. *Heinous crime.*—Receiving in a case punishable by Criminal Court under Clause 4, Section IV of this Regulation, is not one.—*F. U. 18th May*, 1835, *F. M. p.* 54.

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fore convicted of burglary, robbery or other heinous crime; or if the prisoners, or any of them, shall appear to be persons of notoriously bad character; or shall be charged with having committed the offence while employed in the office of watchmen, guards, or police officers; or if property be stolen of which the value or amount shall exceed the sum of one hundred Rupees; in all such cases it shall be the duty of the Criminal Judge to commit the whole of the prisoners, who may appear, from the evidence adduced, to have been concerned in the offence, to take their trial before the Session Court.

*Third.*—In cases of conviction before the Session Court, of individuals charged with any of the offences above specified, if the act be accompanied with an attempt to commit murder, whether by wounding, burning, strangling, drowning, throwing into a well, or by any other means, or be accompanied with wounding, burning or corporal injury to any person or persons, in such degree as to endanger life, the Session Judge shall refer the trial to the Court of Foujdaree Udalut; and the offender or offenders, who may be convicted to the satisfaction of that Court, of having been concerned as principals or accomplices in the crime, shall *on conviction be sentenced to corporal punishment not exceeding* 195 *lashes with a cat-of-nine tails, and to imprisonment and transportation for life.—Cl.* 2, *Sec.* II, *Reg.* I, 1825.—If the Session Judge be of opinion that there are grounds for a mitigation of the prescribed punishment, he shall state the same for the consideration of the Foujdaree Udalut.

*Fourth.*—In cases of conviction before the Session Courts, of any offences specified in Clause second of this Section, wherein the house-breaking and theft, or attempt to commit the same, may not have been accompanied with an attempt to commit murder, nor with wounding, burning, or other corporal injury, in such degree as to endanger life, but may have been attended with wounding or other corporal injury in a less degree, the Session Judge, provided he concur in the conviction of the offender, shall, without reference to the Foujdaree Udalut, adjudge him to suffer such punishment as may appear adequate to the offence, not exceeding 195 lashes with a cat-of-nine tails, and imprisonment for fourteen years in banishment from the district where the prisoner may have resided.

*Fifth.*—Nothing in the above Clause shall be construed to empower the Session Courts, to pass and order execution of a sentence of conviction and punishment, without reference to the Foujdaree Udalut, in any case of robbery by open violence, as defined in Clause first, Section III, Regulation XV of 1803; or to authorize an enhancement of the penalties declared by the Regu-

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lations in force for burglary or theft, when not accompanied with wounding or other corporal injury, nor with an attempt to commit murder by strangling, or other means, as described in Clause third of this Section.

*Sixth.*—If from the investigation held by the Criminal Judge in the cases described in Clause first of this Section, there shall appear reason to believe, that any prisoner apprehended and brought before him, has been guilty of the offence charged against him, but that such offence has not been attended with any of the circumstances of aggravation specified in Clause second of this Section; the Criminal Judge shall, in addition to the evidence which may be adduced on the part of the prosecution, take the defence of the prisoner, and the evidence of the witnesses who may be designated by the prisoner in support of his or her defence; and after a full and deliberate investigation, shall proceed, without reference to the Session Court, to pass sentence of acquittal or conviction. If the prisoner be convicted, the Criminal Judge is hereby empowered to sentence him to imprisonment, with hard labour, for a period not exceeding two years, and to corporal punishment not exceeding 150 lashes with the cat-of-nine tails.

III. *First.*—Under the existing Regulations, the Criminal Judges are empowered to sentence prisoners convicted before them of theft, to imprisonment for a period not exceeding six months, with corporal punishment not exceeding 150 lashes with the cat-of-nine tails, and in cases demanding a more severe punishment, they are required to commit the prisoners for trial before the Session Court. The following rules are now enacted for extending the powers of the Criminal Judges in the punishment of prisoners convicted of theft, and for defining the cases which are to be cognizable respectively by the Criminal Judges, and by the Session Courts.

*Second.*—In all cases of theft, whether in a house, warehouse, or other place, or from the person of another—not coming within the provisions of the Regulations in force for the punishment of robbery by open violence, or the provisions of Clause first, Section II of this Regulation—if the theft, or the attempt to commit the same, shall have been accompanied with an attempt to commit murder, or with wounding, burning, severe corporal injury, or other aggravating act of personal violence, *or the property stolen shall exceed* 300 *Rupees in value—Sec.* IX, *Reg.* I, 1825, it shall be the duty of the Criminal Judge to commit the whole of the

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Sec. II, Cl. 6. A sentence of imprisonment passed under this clause, should at least exceed six months, either with or without lashes—the object of it being to provide for offences requiring a longer period of confinement.—*See C. O. No.* 139, 13*th May*, 1841.

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prisoners who may appear, from the evidence adduced, to have been concerned, either as principals or accomplices, in the offence, to take their trial before the Session Court. The Criminal Judge shall also commit for trial before the Session Court, any prisoners charged with theft—although not attended with the aggravating circumstances abovementioned—who from their notoriously bad character, or from their having been before convicted of a heinous offence, or from any other peculiar circumstances of the case, may appear to him deserving of a severer punishment than the Criminal Judge is authorized to inflict under the following Clauses of this Section.—Such persons, if convicted on trial before the Session Court shall be sentenced to corporal punishment not exceeding 195 lashes with a cat-of-nine tails, and to imprisonment and transportation for life.—*Cl.* 2, *Sec.* II, *Reg.* I, 1825.

*Third.*—With exception to the cases mentioned in the preceding Clause, the Criminal Judges shall hear and determine, without reference to the Session Courts, all other cases of theft which may be brought before them; and after having duly considered the evidence which may be adduced on the part of the prosecution, and of the prisoner, shall pass sentence of acquittal or conviction.

*Fourth.*—In cases of theft cognizable by the Criminal Judges under the foregoing Clause, if the amount or value of the property stolen shall exceed fifty Rupees; or if the persons committing the theft, shall have been before convicted of theft, burglary, robbery, or other heinous offence; or if the prisone[illegible] hall have committed the offence while employed in the office of watchman, guard, or police officer; or be a servant of the person from whom the property may have been stolen, or a servant employed in the house in which the theft may have been committed; as well as in all cases of cattle-stealing; the Criminal Judge shall be empowered, on

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Sec. III, Cl. 3. *The Criminal Judge shall also commit, &c.*—See C. O. F. U. 19th June 1823, ruling the sentence thus commencing, and ending with "*Clauses of this Section*" to be "parenthetical." In support of which view may be added, what appears to have escaped notice, that it is specially so marked in the original Regulation. *Heinous crime.*—Not applicable to "Thefts punishable under Sec. VII, Reg. X of 1816;" such having been declared "not heinous" in the preamble to Reg. IV o[illegible] 1811.

Sec. III, Cl. 4. *Cattle Stealing.*—By Sec. III, Reg. VI of 1827, every case of this offence, is punishable, at the discretion of the Criminal Judge, either under Sec. VII, Reg. X of 1816, or this enactment, as its degree of criminality may appear to render proper. It has been held however, notwithstanding this, and that Sec. LIV, Act VII of 1843, gives to Magistrates concurrent jurisdiction with the Criminal Judge under Sec. VII, Reg. X of 1816, that cases of cattle stealing, other than petty, are not cognizable by the Magistracy: a construction the soundness of which appears very doubtful, especially when the reasoning of the F. U. in their C. O. 23d Dec. 1847, No. 189, is considered. It is there ruled, that as the Criminal Judge might punish, a theft—*although committed by a servant*—under Sec. VII, Reg. X of 1816, if the punishment therein prescribed appeared adequate, so the Magistrate, who has now a concurrent jurisdiction under that law, may do the same—and by a parity of reasoning "Cattle stealing" would seem to be in the same category.

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proof of the guilt of the prisoner, to sentence him to imprisonment with hard labor for such period as may appear proper, not exceeding two years, and to corporal punishment not exceeding 150 lashes with a cat-of-nine tails.

*Fifth.*—In other cases of theft, not included in the foregoing provisions, the Criminal Judges shall pass sentence on the prisoners under the powers vested in them by Section VII, Regulation X of 1816.

In explanation of Clause fourth, Section III, Regulation VI of 1822, it is hereby declared, that nothing contained therein shall be construed to require that persons convicted before the Criminal Judge of any of the offences specified in that Clause, shall in all cases be sentenced to a severer punishment than he is empowered to inflict under Section VII, Regulation X of 1816; or to take away from the Magistrates and heads of district police the power of punishing in petty cases of cattle-stealing. But in all cases of conviction before the Criminal Judge of any of the offences specified in that Clause, he shall be competent to use his discretion in sentencing the offender to any punishment which he may think proper, provided that the punishment shall in no case exceed imprisonment with hard labor for the term of two years, and 150 lashes with a cat-of-nine tails; and petty cases of cattle-stealing shall be punishable as heretofore by Magistrates and heads of district police, like other petty thefts, under the provisions of Section XXXIII, Regulation IX of 1816, and Section IV, Regulation IV of 1821. —*Sec.* III, *Reg.* VI, 1827.

IV. *First.*—The Criminal Judges shall be guided by the following rules in the investigation of charges preferred against individuals for the offence of receiving or buying stolen goods, cattle, jewels, money, or effects of whatever description, knowing the same to have been stolen.

*Second.*—All prisoners who may appear to the Criminal Judge, from the investigation held by him, to be guilty of having purchased or received, plundered or stolen property, of any description, knowing at the time of purchasing or receiving the same, that such property had been obtained in the perpetration of robbery by open violence, or of theft accompanied with any of the aggravating circumstances described in the Clause second, Section II, or Clause second, Section III of this Regulation, shall be committed by the

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Sec. IV, Cl. 1. *Receiving or buying.*—As a general rule, it has been laid down, that "Receiving" is punishable by the authority by whom the "Theft" itself is punishable, *see C. O. 26th Nov.* 1822.

Sec. IV, Cl. 2. Applicable to "Receivers of property stolen by Thuggee," *see C. O. F. U. No.* 128, 30*th November*, 1840.

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Criminal Judge to take their trial before the Session Court—and such persons if convicted thereof, shall be sentenced by the Session Judge, according to the circumstances of the case, to such period of imprisonment as may appear proper, in no instance however, exceeding fourteen years, and to corporal punishment not exceeding 195 lashes with the cat-of-nine tails.

*Third.*—The Criminal Judge shall also commit for trial before the Session Court, any prisoner charged with the offence of buying or receiving stolen property, of whatever description, knowing at the time, that such property had been stolen, although the property may not have been obtained in the perpetration of theft accompanied by any of the aggravating circumstances described in Clause second, Section II, and Clause second, Section III of this Regulation, if the prisoner shall have been before convicted of the offence of buying or receiving stolen property, or of robbery, burglary, theft, or other heinous crime; or shall appear to be an habitual and professional receiver of stolen property; or a person of notoriously bad character; and such person shall, upon being duly convicted before the Session Court, be liable to such punishment, within the limitations prescribed in the preceding Clause of this Section, as the Session Court may judge proper to direct, on a consideration of all the circumstances of the case.

*Fourth.*—With exception to the cases abovementioned, the Criminal Judges shall hear and determine, without reference to the Session Courts, all other cases in which individuals may be charged with the offence of buying or receiving stolen property, of whatever description, knowing it at the time to have been stolen; or with the offence of having in their possession property obtained by theft or robbery, and knowing at a period of time subsequently to its first coming into their possession, that such property had been so obtained, notwithstanding which, they may have kept the stolen property in their possession, without restoring it to the owner, or giving information to the local police officer or Magistrate; in such cases the Criminal Judge, after having duly considered the evidence in support of the prosecution, the defence of the prisoners, and the evidence of the witnesses designated by the prisoners, shall proceed to pass sentence of conviction or acquittal—if the prisoners be convicted, the Criminal Judge is hereby empowered to sentence them to imprisonment with hard labor for a period not exceeding, in any case, two years, and to corporal punishment not exceeding 150 lashes with the cat-of-nine tails

*Fifth*—It is hereby explained, that persons charged with the offences specified in the preceding Clauses of this Section, may be brought to trial, and sentenced to punishment, although the actual perpetrators of the theft or robbery may not have been convicted;

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provided however, that the fact of the theft or robbery having been committed, be established, and it be proved, that the purchaser or receiver knew that the property in question had been obtained by theft or robbery.

*First.*—Any person or persons convicted before the Criminal Judge, of poisoning or maliciously killing, maiming, or wounding, one or more Horses, Asses, Cows, Oxen, Buffaloes, or other Cattle, shall be punishable with imprisonment not exceeding two years.—*Sec.* VIII, *Reg.* XIII, 1832.

Any person or persons, charged with melting or disguising the appearance of ornaments, or other articles formed of the precious metals, or jewels, with a fraudulent intent, and any person or persons charged with purchasing, receiving or altering the appearance of stolen property, offered under suspicious circumstances, without giving information to the Head of the Village, or other Police Officer, shall on conviction before the Criminal Judge, be punishable by imprisonment not exceeding two years.—*Sec.* IX, *Reg.* XIII, 1832.

V. *Second.*—The cases of convicts or of prisoners ordered to be confined till they give security for good behaviour, who may effect their escape, while under sentence or order of imprisonment, from a jail or other place of confinement, or from the custody of their guards, shall be cognizable by the Criminal Judge; and upon conviction, the Criminal Judge shall be empowered to sentence the offenders to corporal punishment, not exceeding 150 lashes with a cat-of-nine tails, and (if sentenced to a limited period of imprisonment,) to suffer such further period of imprisonment beyond the unexpired term of their original sentence, as he may judge proper; provided however, that such additional imprisonment shall in no case exceed the period of two years.—If the prisoner be in confinement under an order to find security for good behaviour, he may be sentenced to imprisonment for a specific term, not exceeding two years.

*Third.*—The cases of prisoners apprehended and detained in custody, under examination on charges of a criminal nature, but not admitted to bail, who may effect their escape from a jail or other place of confinement, or from the custody of their guards, shall also be cognizable by the Criminal Judges; and such prisoners, being duly convicted of the offence in question, shall be liable to a sentence of imprisonment in no case exceeding six months.

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Sec. V, Cl. 2. *Convicts.*—In regard to convicts under sentence of imprisonment or transportation for life, *see Act XVIII of* 1845, *at page* 47.

Sec. V, Cl. 3. An "attempt to escape" is not punishable under this Clause.—*F. U* 21*st July*, 1837; *C. R. No.* 934, *p.* 483.

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*Fourth.*—The rules contained in the two preceding Clauses shall not however be considered applicable to the cases of convicts or other prisoners, who, in effecting their escape, or in attempting to effect their escape, shall be guilty of such a degree of violence towards their guards, or other individuals, as may in its consequences involve the wounding or severe personal injury, of any person or persons.—In all cases of that nature, it shall be the duty of the Criminal Judge to commit the offender to take his trial before the Session Court.

VI. The powers vested in the Session Courts and in the Foujdaree Udalut, with regard to the revision of sentences and orders passed by the Criminal Judges, shall be considered applicable to all sentences and orders passed by the Criminal Judges under this Regulation.

*First.*—Where claimants of disputed lands or crops, or other persons assisting such claimants, may, in taking, or attempting to take forcible possession of the disputed lands or crops, kill or wound, or violently beat any person, the Collector shall take cognizance of such violent acts as Magistrate, and shall proceed according to the Regulations and circumstances of the case, forwarding the offenders, and all persons aiding or assisting them in the act, to the Criminal Judge, to be by him dealt with according to the provisions of the general regulations.

*Second*—The Criminal Judge shall exercise his discretion, in granting to parties injured by the violent acts of claimants of disputed lands, the whole or any part of the fine, which they may levy from the aggressors under the preceding Clause.—*Sec.* XII, *Reg.* V, 1822.

Where the agents, servants or dependants, or other persons in the employment of claimants of disputed lands or crops, may take, or attempt to take possession thereof by force, and the actual claimant may not be present, the Criminal Judge shall proceed against the parties actually present in the manner herein directed, in the event of their having killed, wounded or violently beaten any person: where it may be proved, that the parties immediately concerned in taking or attempting to take possession of disputed lands or crops, acted by the orders, or with the knowledge or connivance of the actual claimants, such actual claimants shall also be proceeded against in the Criminal Court in the same manner as if they had been present.—*Sec.* XIII, *Reg.* V, 1822.

Where claimants of disputed lands or crops, may go armed with

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Sec. XIV, Reg. V, 1822. *Trial before the Criminal Court.*—So in the original and all subsequent Editions of this Regulation, but it clearly ought to have been "Circuit," and now to be "Session Court." The Section is an instruction to the Criminal Judge before whom it supposes the parties to be.

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swords, sticks or other weapons, or give orders for, or connive at other persons going so armed, to take possession of such lands and crops; and where the party in possession of such lands or crops, or other person having claim thereto, may use violent and unjustifiable means of defence, beyond what is necessary to guard their own lives and persons, to prevent such claimants or armed persons, from taking possession of the lands or crops, or to dispossess them by force; and where in consequence of such unjustifiable means of defence having been used, affrays ensue, and people are killed, wounded or violently beaten, on either side, the Criminal Judge shall adjudge the lands and crops in dispute to be forfeited to Government, and both claimants and other persons concerned or assisting in the affray, shall be committed to prison or to bail, (according to the circumstances of the case), to take their trial before the Criminal Court.—*Sec.* XIV, *Reg.* V, 1822.

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# NATIVE POLICE.

## REG. XI of 1816, &c.

A Regulation *for the establishment of a general system of Police throughout the territories subject to the Government of Fort St. George.*

III. The present establishments of Police Darogahs and Tanahdars shall from the first day of November 1816, be abolished, and the duties heretofore discharged by those persons, shall be performed by persons of the descriptions hereinafter mentioned.

1. Heads of villages as described in Section III, Regulation IV, 1816, aided by Curnums or Village Registers, and Tallyars and other Village Watchers.

2. Tahsildars, or Native Collectors of districts, by whatever name designated, with the assistance of Peshkars, Gomashtas, and establishments of Peons.

3. Zemindars.

4. Ameens of Police.

5. Cutwals and their Peons.

6. Magistrates of Zillahs, their Subordinates and Assistants.

IV. Heads of villages shall be ex-officio Heads of the Police of their respective villages.

V. *First.*—Heads of villages are authorized and directed to apprehend all persons charged with committing crimes, or offences, or breaches of the peace; and all persons accused of injuring the public buildings, roads, tanks, and water channels; and except in the trivial cases, wherein they are authorized by Section X of this Regulation, *and by Section* VI, *Reg.* IV *of* 1821, to inflict punishment, they shall forward the persons, whom they may apprehend, together with the accusers and witnesses, to the Police Officer of the district.

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Sec. III. *Head of Village.*—The principal manager of its affairs, however designated; provided he be resident therein, and be recognized as such by the Collector.

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*Second.*—Heads of villages shall not receive from any person whom they may apprehend any confession either verbally or in writing, except in the trivial cases referred to in the preceding Clause; nor shall they on any account, except the accused person be in such a state as to render his removal improper, detain any person in their custody longer than twenty-four hours.

VI. In cases of emergency, the Head of the village is authorized to call upon the inhabitants generally, to assist him in securing offenders; and all the inhabitants of the village are hereby required, to co-operate with him on such occasions; provided that no person who is prohibited by the rules of his caste or profession from performing such service, shall be compelled so to do.

VII. If Heads of villages shall be unable with the persons at their command, and the people of their own villages, to apprehend the parties accused, they shall have authority to call on the Heads of neighbouring villages for assistance, and all Heads of villages are hereby required to afford the most prompt assistance whenever they may be called upon by their neighbours so to do.

VIII. Heads of villages shall reciprocally communicate any information which they may receive of offences committed, or of gangs of robbers, or of suspicious persons having entered or taken refuge in each other's villages, and shall co-operate in all things for the apprehension of offenders, and the general security of the country.

IX. Heads of villages shall report to the Police Officer of the district the arrival in their villages of strangers of suspicious appearance, and all information which they may be able to collect concerning such persons.

X. *First.*—In cases of a trival nature, such as abusive language and inconsiderable assaults or affrays, heads of villages shall have authority, on a verbal examination, either to dismiss the parties, or if the offence charged shall be proved to have been committed by the persons accused of it, and shall appear deserving of punishment, to confine the offending parties in the Village Choultry for a time not exceeding twelve hours; or if the offending parties shall be of any of the lower castes of the people, on whom it may not be improper to inflict so degrading a punishment, to order them to be put in the stocks for a time not exceeding six hours.

*Second.*—Heads of villages shall report to the Police Officer of the district all cases in which they shall have exercised the power

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Sec. VIII. *Suspicious persons.*—In regard to surveillance, which in accordance with the ancient practice and custom of the country, may with propriety be exercised by Heads of Village over such characters, *see C. R. No.* 413, *page* 186.

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of punishment granted to them by the first Clause of this Section, but it shall not be necessary for them to report the cases in which they may dismiss parties.

*First.*—The powers granted to Heads of villages, under Clause first, Section X, Regulation XI of 1816, to punish trivial offences, are hereby extended, under the rules and limitations therein specified, to the punishment of petty thefts not attended with aggravating circumstances, nor committed by persons of notoriously bad character, and where the value of the property stolen does not exceed one rupee.

*Second.*—Heads of villages shall report to the head Police Officer of the district, all cases in which they shall have exercised the power of punishment granted to them by Clause first of this Section.—*Sec.* VI, *Reg.* IV, 1821.

XI. *First.*—Where Heads of villages may have credible information of stolen property being concealed, and there may be reason to apprehend that it will be made away with, unless prompt measures be taken to secure it, they shall cause search to be made, and the property, if found, to be secured and forwarded, with the offender, to the Police Officer of the district. If the place of concealment be a dwelling house, the search shall be made only between sun-rise and sun-set.

*Second.*—Heads of villages shall apprehend, and send to the Police Officer of the district, all persons who may be found selling property which there may be reasonable ground to suspect has been stolen, and of which such persons may not be able to give a satisfactory account.

*Third.*—Heads of villages shall also send to the Police Officer along with the persons accused of selling stolen property, such persons as may be able to give an account of the circumstances of the case.

XII. Heads of villages shall take charge of all stray cattle, horses, sheep, and other strays, of which the owners may not be known: and shall report each case to the Police Officer of the district.

LII. Such strays, of which the owners cannot be found, shall, after the expiration of three months, be sold by public auction, by order of the Magistrate; and if within six months more, no person shall appear to claim the proceeds, the amount thereof, after deducting the expenses incurred, shall be carried to the credit of Government.

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XIII. *First.*—The Head of the village, on receiving information of the discovery of the body of a person supposed to have been murdered, shall immediately proceed to the spot, with the Curnum and two or three respectable inhabitants, in whose presence he shall examine every person who may be able to afford any information regarding the discovery of the body, and it's appearance when discovered, or regarding the murder of the deceased, if the body should have been deprived of life by murder.

*Second.*—The Head of the village on receiving information of the discovery, shall also without delay send notice of it to the Police Officer of the district, and if the Police Officer shall arrive at the spot in time to enquire into the circumstances under which the body may have been discovered, the enquiry shall be conducted under his superintendence.

*Third.*—If the Police Officer should not appear to conduct the inquiry, the Head of the village shall cause the Curnum to take down in writing the evidence of the persons who may be examined, and to record any necessary particulars respecting the appearance of the body, and to frame a report of the whole proceedings. The Head of the village shall attest such report with his signature, and having procured it to be attested by two or more of the inhabitants who may be present at the investigation, and by the Curnum, he shall forward it to the Police Officer of the district, with the evidence he may have taken.

*Fourth.*—If on the proceedings of the Head of the village there shall in any case appear ground for suspecting any person or persons, who may be within his jurisdiction, of having committed the murder, the Head of the village shall immediately apprehend and send such person or persons to the Police Officer of the district.

XIV. Curnums shall keep registers of persons confined by the Heads of villages under Section X of this Regulation, and these registers shall be transmitted monthly, by the Heads of villages, to the Police Officers of their respective districts, to be forwarded to the Magistrate.

XV. Village Watchers, by whatever local name distinguished, shall perform their customary police duties under the immediate authority of the Heads of their respective villages, but they shall not be called upon to make compensation for losses by theft.

XVI. In villages where the office of Village Watcher does not exist, and where it appears that the duty cannot be discharged by

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Sec. XIII. *See* Sec. XXXVI as to presence of Tahsildars at inquests, in cases of murder—C. O. 25th March 1824, in regard to inquests on persons dying in custody—and 30th January 1833, as to inquests generally.

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any of the other village servants, Village Watchers shall be appointed by the Magistrate, and shall as far as possible be selected from the Dhers, Beders, and other castes best qualified for police duties.

XVII. *First.*—The office of Village Watcher wherever it may be found to exist, and wherever it may be hereafter created under the provisions of the preceding Section, shall be hereditary.

*Second.*—Upon the death of any Village Watcher, the Head of the village shall report the same to the Police Officer of his district for the information of the Magistrate, and also the name of the person who may have succeeded by inheritance to the office.

XVIII. Village Watchers appointed under Section XVI of this Regulation, shall be entitled to receive such allowances in land, grain, or money, as Government may allot for their maintenance, and the allowances thus made shall be hereditary in their families.

Village Watchers, as well as all other persons who hold, or may hereafter hold, hereditary Village, or other offices, in the Revenue and Police departments, to which emoluments have been annexed by the State, shall be under the immediate authority and control of the Collectors of the districts in which such offices are established; and shall be liable to suspension or removal from office, for incapacity, neglect of duty, or other just cause, by the orders of the Collectors; subject in every instance to the approval of the Board of Revenue, and to the sanction of the Governor in Council, in all cases in which he may see fit to interfere.—*Sec.* VII, *Reg.* VI, 1831.

XXI. Village Watchers shall apprehend persons whom they may discover committing any criminal act or breach of the peace, and carry them before the Head of the village. They shall likewise apprehend, and carry before the Head of the village, all persons charged with committing offences or breaches of the peace, and shall require the prosecutor to accompany them.

XXII. Village Watchers shall report to the Curnum and the Head of the village, all suspicious persons either residing in or passing through the village.

XXIII. Village Watchers shall likewise report to the Curnum, and Head of the village, all information which they may obtain, connected with the peace and good order of the village; and they shall in all things connected with their duty, obey such orders as they may receive from the Heads of their respective villages.

XXIV. Cutwals and their Peons, wherever it may be necessary to employ them, shall be subject to the authority of the Tah-

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sildars and Heads of villages; and shall be directed by their orders in all police duties, in furnishing supplies for travellers, and in the maintenance of the peace.

XXV. *First.*—Tahsildars, or Native Collectors of districts, by whatever name designated, shall ex-officio be Heads of the police of their respective districts; they shall be charged with the maintenance of the peace, and they shall report to the Magistrate all acts which they may do, and all material information which they may receive connected with their police duties.

*Second.*—The Peshkars, Gomashstas, and Peons, who are or may be employed under Tahsildars of districts, shall perform the duties of police, as well as revenue duties, and they shall be considered Officers of Police, as well as Revenue Servants.

XXVI. *First.*—Tahsildars shall render all possible assistance to the village police on, or for, the apprehension of offenders.

*Second.*—They shall also send Peons to markets, fairs, and other public meetings in their district, in order to preserve the peace.

XXVII. *First.*—Upon a complaint being made to a Tahsildar of any murder, robbery, house-breaking, theft of a considerable amount, or attended with aggravating circumstances, setting fire to a house or other buildings, counterfeiting the coin, or other heinous offence, he shall make such enquiries as may be necessary to ascertain whether any credit be due to the accusation, and if it shall appear to be worthy of credit, he shall immediately make every exertion to apprehend the person or persons who may be accused, or to whom suspicion may attach of having committed the offence.

*Second.*—When the accused or suspected persons shall be brought before the Tahsildar, he shall take down in writing in their presence, the depositions of the witnesses who may be present, and if in the course of the enquiry it shall appear that there are other persons who may be able to give evidence material to the case, he shall summon such persons and take their depositions.

*Third.*—The Tahsildar shall also receive the confession of the prisoner in any case in which the prisoner may make a free and voluntary confession, and cause the same to be reduced to writing and signed, or if the prisoner should be unable to write, marked, by the prisoner in the presence of two or more respectable persons.

*Fourth.*—So soon as the Tahsildar shall have finished the investigation, which shall be completed within forty-eight hours if pos-

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Sec. XXVII. Cl. 3. *See* the very stringent and precise Circular Orders on the subject of "confessions" under this and Sec. XXX.

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sible, he shall forward his proceedings, with the prisoner and witnesses, to the Criminal Judge of the Zillah, with a report—*or—if the offence have been committed by a native British subject, out of the British territories—to the Magistrate—Cl.* 3, *Sec.* II, *Reg.* II, 1829.

*Note.*—If a delay of more than forty-eight hours should occur, an explanation of the cause of such delay is to be stated at the bottom of the report.

*Fifth.*—The Criminal Judge shall immediately, on the receipt of such paper, certify on the back of it whether or not the prisoner and documents have been received, and shall return it by the Police Peons to the Tahsildar, and no other communication shall be necessary.—*But he may call for any documents, required to be transmitted to him under Sec.* XXVII, *Reg.* XI, 1816, *which may not be so transmitted.—Sec.* II, *Reg.* III, 1817.

XXVIII. If a prisoner should in his confession, made before a Tahsildar, criminate another person, the Tahsildar shall secure such person, and provided the accusation be corroborated by any persons who may appear, or be brought by summons, before the Tahsildar, he shall forward such accused person to the Criminal Judge, together with the witnesses and his proceedings in the case, as is directed in the preceding Section.

XXIX. Upon the arrival of persons charged with any heinous offence, who may have been apprehended and forwarded to the Tahsildar by Heads of villages, the Tahsildar shall proceed as directed in the two foregoing Sections.

XXX. Any Officer of Police or other person maltreating a prisoner, or witness, for the purpose of obtaining information or confession, shall be subject to punishment by the Magistrate according to the nature of the case; and should the offence be of an aggravated nature, the party offending shall be forwarded to the Criminal Judge, to be punished by him, or committed for trial before the Session Court.

XXXI. In cases of bailable offence or misdemeanor, which shall not appear to require the immediate apprehension of the party accused, the Tahsildar shall summon him in writing, and take his declaration, and if necessary the depositions of any witnesses to the truth of the charge; he shall then take security for the appearance of the party accused, together with the accuser and witnesses, on a stated day before the Magistrate, to whom he shall immediately report the case and transmit the depositions.

XXXII. *First.* In trivial offences bail shall not be required, unless there is reason to believe that the party accused means to abscond.

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*Second.*—If the charge in such cases shall appear groundless, or if the parties shall agree in writing, the plaintiff to withdraw, and the defendant to permit the withdrawing of the complaint, the writing being attested by two credible witnesses, the Tahsildar shall dismiss the complaint without making any report thereof to to the Magistrate.

XXXIII. *First.*—Where complaints of offences of a trivial nature, such as are specified in Section X of this Regulation, may be preferred to a Tahsildar in the first instance, he shall enquire into the same, and if the offence be proved, he shall have authority to punish the offender by imposing on him a fine not exceeding *three Rupees—Cl.* 1, *Sec.* V, *Reg.* IV, 1821, *which he may commute to imprisonment not exceeding* 3 *days without labour—Cl.* 2, *Sec.* V, *Reg.* XIII, 1832 ; or if he shall be of any of the lower castes of people, by putting him in the stocks for a time not exceeding six hours.

*Second.*—The Tahsildars shall keep Registers of punishments, as prescribed in Sec. XIV of this Regulation, to be forwarded monthly to the Magistrate.

*First.*—Heads of district Police are hereby empowered to hear and determine cases of petty theft, not attended with aggravating circumstances, nor committed by persons of notoriously bad character ; and on conviction of the accused, when the value of the property stolen shall not exceed five Madras Rupees, *to pass sentence of imprisonment not exceeding ten days with labour, but not to inflict stripes.—Cl.* 1, *Sec.* V, *Reg.* XIII *of* 1832.

*Second.*—Whenever a Head of District Police, investigating under the authority vested in him by this Section, shall be of opinion that the punishment, which he is empowered to inflict, is not adequate to the offence committed, he shall report the case to the Magistrate for his final orders: and the Magistrate shall, at his discretion, either issue his orders in writing to the Head of District Police, to inflict such punishment as the Magistrate may deem sufficient, or he shall order the Head of District Police to forward the parties and witnesses to him for further investigation.

*Third.*—Provided always, that if, at the expiration of thirty days from the date and day of despatch of any reference from a Head of District Police to a Magistrate, under the provisions of the foregoing clause, no answer or orders of the Magistrate shall have been received by the Head of District Police, then the Head of District Police shall release the offenders, and the confinement,

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Sec. XXXIII. If such punishment appear inadequate, he may report to Magistrate for orders, as provided for in Clauses 2 and 3, Sec. IV, Reg. IV of 1821, and Act XXXIII of 1837—*which see following.*

which they have so had, shall be considered a sufficient punishment for the said offence, and they shall not be liable to be again tried for the same.

*Fourth.*—Heads of District Police shall report to the Magistrates, in the mode prescribed by Clause second, Section XXXIII, Regulation XI of 1816, all punishments which they may inflict under the provisions of Clause first of this Section.—*Sec.* IV, *Reg.* IV, 1821.

Petty cases of malicious injury to Cattle, shall be punishable by Heads of Police, by imprisonment to the extent specified in Cl. 1, Sec. V, Reg. XIII, 1832.—*Cl.* 2, *Sec.* VIII, *Reg.* XIII, 1832.

The Provisions of Clauses second and third, Section IV, Regulation IV of 1821, of the Madras Code, shall apply to all petty offences cognizable by Heads of District Police, as well as to petty thefts.

Whenever any Head of District Police shall, under those provisions, report any case whatever to a Magistrate for final orders, such Head of District Police shall state precisely in his report, the description and extent of the punishment, which in his opinion, is proper to be inflicted in that case; and the said Magistrate, if he give orders at variance in any respect with that opinion, shall record his reasons for varying from it.—*Act* XXXIII, 1837.

*Second.*—In cases of injury to any complainant, when the fine may have been levied, it shall be lawful for the Head of District Police, to award the whole, or any portion of such fine, to the party aggrieved, by way of satisfaction for such injury, as he may deem equitable—the remainder of such fine, if any, to be carried to the account of Government.

*Third.*—Head Officers of District Police shall make immediate report to the Magistrates of all cases in which they shall exercise the power of fining under Sec. XXXIII, Reg. XI of 1816.—*Sec.* V, *Reg.* IV, 1821.

Exemption from the necessity of recording depositions is hereby

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Sec. IV, Reg. IV, 1821. Upon such reference, the Magistrate may direct the Head of Police to inflict corporal punishment.—*F. U. 16th July*, 1835, *V. M.* 96, *p.* 100

Punishments for several distinct petty offences may not be made cumulative: nor may thefts *exceeding* 5 *Rupees* be punished by the Police after reference.—*See C.O. 28th Oct.* 1823.

Reg. XIII, 1832, Sec. VIII, Cl. 2. *Extent specified, &c.*—That is "ten days with labour, but without stripes" as above in Cl. 1, Sec. IV, Reg. IV of 1821.

Reg. XIII, 1832, Sec. X. *Exemption.*—In original "*same* exemption," referring to an exemption granted—by Sec. VIII, Reg. IV of 1821, and since rescinded by Sec. III, Reg. VIII of 1832—to Magistrates, from the necessity of taking down in writing, or recording examinations taken by them, in investigation of complaints preferred before them under Sections XXXII and XXXIII, Regulation IX of 1816; but this Section being unrepealed, the law in the case of "Heads of Police," remains unaltered,

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granted to Tahsildars and other head Police Officers of Districts in the examination of cases on which it is competent to them to pass decision.—*Sec.* X, *Reg.* IV, 1821.

XXXIV. Tahsildars of districts shall reciprocally communicate any information which they may receive of offences committed, or of gangs of robbers, or of suspicious persons having entered or taken refuge in each other's districts, and shall co-operate in all things for the apprehension of offenders, and the general security of the country.

XXXV. *First.* Tahsildars, and the Officers acting under them, shall have authority to pursue offenders into whatever district or zillah, they may fly, and to require the Officers of Police in such district or zillah, and if necessary the inhabitants in general, to assist them in securing the offenders; and such Police Officers and inhabitants shall immediately afford the required assistance. Tahsildars and other Police Officers, apprehending persons within a different zillah from that to which they belong, on a warrant from a Magistrate, or in consequence of a pursuit, on a hue and cry, raised against such persons, shall bring them before the Magistrate of the zillah, in which they may be apprehended, and report the cause of the seizure of such persons. If such persons shall be apprehended under a warrant issued by the Magistrate of another zillah, and the Magistrate of the zillah in which they may be apprehended, shall be satisfied of the identity of such persons with those intended by the warrant, he shall affix his signature to such warrant, which shall be a sufficient authority for the Police Officers to convey the offenders from the zillah in which they may be apprehended, to the Magistrate in whose jurisdiction the offence may have been committed. But if the persons apprehended, and brought before such Magistrate, shall appear not to be those intended by the warrant, he shall forthwith cause them to be released.

*Second.* If the parties shall be apprehended without a warrant, on information given to the Police Officers, or on hue and cry, the Magistrate, within whose jurisdiction they may be apprehended, shall investigate the case, and if he shall be satisfied that there is sufficient cause for bringing the parties before the Magistrate in whose jurisdiction it may be alleged that they have committed offences, he shall forward them with a letter to such Magistrate; but if the Magistrate shall be satisfied that the alleged offence or offences have not been committed, or that there is no ground to suspect the persons apprehended to have been concerned in committing such offence or offences, he shall forthwith cause them to be discharged.

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XXXVI. The Tahsildar, in all cases of murder, within his district, shall himself, if possible, proceed to the spot, examine the body, the place where it was first found, and all other circumstances that may be likely to lead to the discovery of the perpetrators of the crime.

XXXVII. Where Tahsildars may have credible information of stolen property being concealed, and there may be reason to apprehend that it will be made away with, unless prompt measures be taken to secure it, they shall cause search to be made, and the property, if found, to be secured and forwarded with the offender to the Magistrate. If the place of concealment be a dwelling house, the search shall be made only between sun-rise and sun-set.

XXXVIII. In districts where, from the land rent being paid directly to the Collector, there may be no Tahsildars, the Magistrate shall grant to the most respectable Native Revenue Servant employed in the collection of the customs, or other dues of Government, the same police authority as is vested in Tahsildars. But in the ancient zemindaries, whose revenues have always been under the exclusive management of the Zemindars themselves, the Magistrate shall not establish any Police Officer, except in such places as Darogahs may have already been established, without the previous sanction of the Governor in Council.

XXXIX. Magistrates are authorized to grant, upon their own responsibility, to Zemindars, who may be desirous of acting as Heads of police, and whom they may consider to be qualified for the office, sunnuds to act as such within the limits of their respective zemindaries only. The Magistrate shall prescribe to the Zemindars, in their commissions, the whole or such part of the duties and authority vested by this Regulation in Tahsildars, as they may deem proper.

XL. In large towns, where it may be found that the police duties cannot be conducted by the Head Inhabitant, the Magistrate shall appoint a person to act as Ameen of Police, either immediately under his own orders, or under the Tahsildar of the district; and either with the police powers vested in Heads of villages, or with those vested in Tahsildars by this Regulation, as may appear expedient.

*First.*—In modification of the provisions of Section XL, Regulation XI of 1816, it is hereby declared competent to Magistrates

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Sec. XXXVI. Persons aware of the discovery of a body bearing signs of violence, are bound to give information to the Police, and parties putting such body out of the way, without giving such information, to an officer empowered to hold an inquest, are "liable to be proceeded against for a misdemeanor.—*F. U.* 12*th Oct.* 1836, *C. R. No.* 39, *p.* 17.

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to extend, at their discretion, the local limits of the jurisdiction of Ameens of Police, to any distance they may see fit beyond the towns to which such Ameens have been, or may be appointed.

*Second.*—Ameens of Police, and generally all subordinate Officers of Police of every description, shall be subject to the authority of the Tahsildars of their several Districts; and shall perform all such revenue duties as may be assigned to them by the Collectors or the Tahsildars under whom they serve.—*Sec.* II, *Reg.* IV, 1821.

All Ameens of Police who have been, or may be appointed according to Section XL, Regulation XI of 1816, of the Madras Code, to act with the Police powers vested in Tahsildars by that Regulation, shall possess all Police powers and Criminal Judicial powers which are vested in Tahsildars within the Territories subject to the Presidency of Fort St. George, by any Law or Regulation whatever, and shall be subject to all provisions to which, by any Law or Regulation, Tahsildars are subject, in respect of any of those powers.—*Act* XXX, 1837.

*First.*—Magistrates shall select such number of competent subordinate Officers, belonging to their District Establishments, as may appear to them necessary to perform, in different parts of each Talook, the police duties assigned to Tahsildars, and other head Officers of Police, by Sections XXVII, XXVIII, XXIX, XXXI, XXXII, XXXVI, and XXXVII of Regulation XI of 1816: and all acts, done in conformity with the provisions of the enactments here referred to, by the persons so selected, shall be valid.

*Second.*—The subordinate Officers referred to in the foregoing clause, shall forward to the heads of police of their respective Districts, all examinations, depositions and confessions, that may be taken by them, together with the prisoners and witnesses in every case which they may investigate, in order that the said heads of Police may transmit them to the Magistrate, or the Criminal Judge, in conformity with the existing Regulations.

*Third.*—The persons who may be selected under the provisions of this Section, shall not have authority to inflict punishment of any kind, nor to hear or determine complaints for petty offences—and they shall be subject to the authority of the Tahsildars of their respective districts.—*Sec.* III, *Reg.* IV, 1821.

XLII.—No Police Officer shall entertain complaints of petty offences, unless such complaints shall be preferred within three months from the date of the act complained of. It shall be at the option of the parties however, to prefer complaints of such petty offences to the Magistrate at any time, and if the delay shall be shewn to have been unavoidable, the Magistrate shall have authority to receive and investigate such complaints.

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XLIII.—All persons are authorized and directed to secure strangers, or suspicious persons, who may be found offering property for sale, or in pawn, at a price evidently below its real value, or removing property under suspicious circumstances at an unseasonable hour of the night, and to bring them with the least possible delay before the Police Officer of the jurisdiction in which the offence may be committed.

XLVI.—Tahsildars and other Police Officers acting under them, shall not take cognizance of cases of adultery or fornication.

LI. *First.*—The Magistrate, and under his orders the Tahsildars and heads of villages, shall have authority to prevent the forcible occupation or seizure of lands or crops.

*Second.*—When riotous assemblages are formed in consequence of disputes respecting the right of ploughing any waste or uncultivated lands, which may not be in the possession or occupation of any person, the Magistrate, and under his orders, the Tahsildars and heads of villages, shall have authority to determine who shall plough them for the present, in order that cultivation may not be impeded by the land being kept uncultivated, while the trial which the parties may seek is depending. But in all the cases specified in this Section, the parties shall be at liberty to seek redress from any competent jurisdiction.

*Third.*—The provisions of the two preceding Clauses shall be considered as equally applicable to the forcible occupation or diversion of water for cultivation.

Whenever any charge preferred to a Head of District Police, or Police Officer specially vested with the powers of a Head of District Police, under the provisions of Section III, Regulation IV, 1821, shall appear to be wilfully false and malicious, the Police Officer shall forward the party, by whom the charge shall have been preferred, to the Criminal Court, and upon conviction, the Criminal Judge shall sentence him to such period of imprisonment as, on consideration of the apparent motives and tendency of the said charge, shall appear proper, not exceeding six months.—*Sec.* II, *Reg.* IX, 1832.

The provisions of Section II, Regulation IX of 1832, shall be applicable to false charges, preferred to Ameens of Police appointed under the provisions of Section XL, Regulation XI of 1816.—*Sec.* VI, *Reg.* XIII, 1832.

*First.*—For extortion, oppression or other abuse of authority, all Native Officers of Police shall be liable to be sued in a Zillah Court, or to be prosecuted in a Court of Criminal Judicature.

*Second.*—Whenever a charge of this nature may be preferred

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before a Magistrate, and be proved by sufficient evidence to his satisfaction, he is hereby empowered to punish the offender by a fine not exceeding fifty Rupees, or by imprisonment for a term not exceeding one month.

*Third.*—In all cases wherein the measure of punishment specified in the preceding Clause shall appear to be insufficient, the party accused shall be forwarded to the Criminal Judge, to be by him dealt with according to the provisions of the general regulations.—*Sec.* III, *Reg.* III, 1819.

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# ABKAREE,

## REG. I OF 1820, &c.

*A* REGULATION *for prescribing the rules under which Arrack, Toddy, and other spirituous and fermented liquors, shall be manufactured and sold within the territories subject to the Presidency of Fort St. George, without the limits of the jurisdiction of the Supreme Court of Madras.*

III. All persons are forbidden to manufacture or sell rum, arrack or other spirits, or toddy or other fermented liquors, except in conformity with the provisions of this Regulation.

IV. *First.*—The Board of Revenue are hereby authorized to empower Collectors to grant to Europeans, descendants of Europeans, Armenians, or other persons whom such Collectors may approve, licenses to establish, in such places as may appear to the Board to be proper, distilleries for manufacturing rum, arrack or other spirits, by process of distillation similar to the European system; and such licenses shall accordingly be issued by the Collectors under their official signature, on the parties to whom they may be granted executing counterparts of such licenses, to be lodged with the said Collectors respectively.

*Fifth.*—Any person who shall be found working a distillery of the kind above specified, without obtaining a license, or after the period for which his license was granted, and before obtaining a renewal thereof, or after the forfeiture thereof, shall, on proof of the fact before the Criminal Judge of the Zillah, forfeit all the spirits manufactured at such distillery, together with all the stills, vessels and other moveables appertaining thereto; and also the sum of two Rupees, for every gallon which each still in such distillery is calculated to contain, for each day in which he shall ap-

Reg. I, 1820. For law relative to Abkaree generally, *see* this regulation passim, and also Acts XXIII of 1841, and XXXII of 1845, and within limits of Military Bazar Stations, Sec. XLIII,—XLVII, and Sec. XVI, Reg. VII of 1832 under "Military Police, &c."

Sec. IV. *Licenses.*—Further directions in respect of their form, and stipulations, are given in Sections II and III, Act XXXII of 1845.

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pear to have worked such still, in the said distillery, without a license.

Notwithstanding anything in this Act—*XXIII*, 1841—contained, no person intending to manufacture rum, or rum shrub, within the Presidency of Madras, shall establish a distillery for such purpose without making application for a license in the manner directed by Regulation I of 1820 of the Madras Code; and every person manufacturing rum, or rum shrub within the Madras Presidency, without having first obtained such license, shall be liable to the penalties provided in that regulation.—*Sec.* X, *Act* XXIII, 1841.

VI. *Seventh.*—Persons charged with having mixed or permitted to be mixed, noxious ingredients with the liquors, prepared or distilled by them, or under their directions, shall be committed for trial before the Session Court, and on conviction of such offence, shall be subject to imprisonment and hard labour on the public roads, for a period not exceeding three years.

*Eighth.*—Persons convicted before the Magistrate of permitting drunkenness and riot in their shops, or of harbouring thieves or persons of notoriously bad character, or of bartering or pawning liquor for grain, wearing apparel or other effects, shall be sentenced to pay such fine, not exceeding two hundred Rupees, as may appear to the Magistrate an adequate punishment for their offence; the amount of such fine to be levied by distress and sale of the property of the offender; or, if no property of such offender be found, or not sufficient to pay the amount of such fine, or otherwise in default of the payment of such fine, such offender shall be sentenced to imprisonment for such time, as may appear to be a fair commutation for such fine or portion of the fine, as may be due: provided that such imprisonment shall in no case exceed six months.

*Ninth.*—Any person who shall erect a still, or establish a shop, or sell liquor without a license, or at any other place or places, than the place or places mentioned in his license, and kabooleat, or after the expiration of his license, and before having obtained a renewed license, shall, on conviction before the Criminal Judge, be sentenced to pay such fine, not exceeding four hundred Rupees, as may appear adequate to his offence; the amount of such fine to be levied by distress and sale of the property of the offender, or if no property of such offender be found, or not sufficient to pay the amount of such fine, or otherwise in default of the payment of such

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Sec. VI, Cl. 7. *Noxious ingredients.*—Thus explained in Cl. 4 of this Section, "such as Chunam, Oomittakoy, or other material intended to increase the power of the spirit, or add to its intoxicating quality."

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fine, the offender shall be sentenced to imprisonment and hard labour for such time, as may appear to be a fair commutation for such fine or portion of the fine, as may be due: provided that for such fine the imprisonment shall in no case exceed twelve months.

VII. Collectors shall, on requisition made to them to that effect, furnish Criminal Judges of their respective Zillahs, with lists of the names and residence of all persons authorized to work stills or superintend shops under any of the provisions of this Regulation, specifying the places at which such persons are permitted to establish stills or shops.

XI. *First.*—The transit of any quantity, exceeding one seer, of spirituous liquor without a permit, is hereby prohibited; and all persons, not being renters or officers of Government authorized to dispose of spirituous liquors, are prohibited from having in their possession any quantity thereof exceeding one seer without a valid permit.

*Second.*—Permits for the transit of spirituous liquors, shall be issued only by the Collectors, Subordinates, or their assistants, or by abkaree renters, or their sub-renters. Each permit so issued shall specify the quantity of liquor, which it is intended to protect; the name of the person to whom, and the period for which, it is granted; the place from which the liquor is to be removed, and the place to which it is to be carried.

*Third.*—The permit of a Collector or his assistant shall pass any quantity of spirituous liquor, and shall be held valid throughout the territories subject to the government of Fort St. George; the permit of an abkaree renter, or of his sub-renter, shall not pass more than 150 gallons of spirituous liquor, or one leaguer; and shall not be held valid beyond the boundaries of his own farm. To protect the transit of spirituous liquor exceeding 150 gallons, or one leaguer, not produced within the boundaries of his farm, a renter, like other individuals, must apply for a permit, to the Collector, his subordinate, or assistant.

XV. All persons passing spirituous liquor unaccompanied by a valid permit, or materially exceeding the quantity specified in the permit; all persons attempting the same; all persons having in their possession spirituous liquors exceeding one seer without a valid permit; and all persons who, without the privity of the Collector, shall remove the seal or lock which he is authorized by Section XIII of this Regulation to place on the doors of certain premises, shall, on proof thereof before the Criminal Judge, be liable to the payment of a fine, in no case exceeding five hundred Rupees, and in default of payment, to imprisonment for a period not exceeding twelve months.

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XVI. *First.*—Magistrates are hereby authorized to issue search warrants for the discovery of unlicensed stills, or of spirituous liquors illicitly sold, manufactured, or deposited, in any place; whenever information may be given to them on oath, or solemn affirmation, or obtained by them from proceedings holden in any investigation before them, or from any credible source, that such illicit manufacture, sale, or transport, has taken place.

*Second.*—Provided always, that no such search warrant shall be executed, but between sunrise and sunset, nor in the apartments of women of respectability and credit who do not ordinarily appear in public, except by women who shall be specially deputed by the Magistrate to execute such warrant.

European British subjects, as well as other parties guilty of the offences specified in Regulation I of 1820, shall on conviction before the Session Judge, or Subordinate Judge of the Zillah, be subject to the penalties therein severally and respectively provided against the commission of such offences; save and except that no European British subject shall in any case be liable to hard labor when imprisoned in pursuance of a sentence passed upon him under that Regulation; but any fines which may be imposed for acts done in breach of the provisions of the said Regulation, or of the provisions of Sections II and III of this Act, shall, in default of payment, be recovered by the distress and sale of the property of the parties against whom such fines shall have been adjudged.—*Sec.* IV, *Act* XXXII, 1845.

It shall be lawful for the Session Judge, or Subordinate Judge of the Zillah, in sentencing any European British subject to imprisonment, to direct that the imprisonment shall be in the gaol at Madras.

The Gaoler of the gaol at Madras, shall receive into the said gaol, any European British subject so sentenced as aforesaid, and keep him there imprisoned, during the term of his sentence, in the same manner as if he had been sentenced by the Supreme Court.—*Sec.* V—VI, *Act* XXXII, 1845.

Neither the Criminal Judge, nor the Magistrate of the Zillah of Chingleput, shall have any jurisdiction in respect of offences committed within the Collectorate of Madras against any Regulation relating to the public revenue.

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Sec. IV, Act XXXII of 1845. *Provisions of Sections* 2 *and* 3.—That the whole liquor manufactured be exported; save what may be sold to Officers of Government; or Abkaree Renters, other than the licensed retail dealers of Madras contemplated by Sec. VII, Reg. I of 1813. Offences against this Law are punishable by Collectors.

Sec. V, Act XXII of 1837. That is, they may be removed from such Jail to any other, by special order of the Foujdaree Udalut.

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The whole jurisdiction now belonging to the said Criminal Judge, and also the whole jurisdiction now belonging to the said Magistrate in respect of such offences, shall belong to the Superintendent of Police of the town of Madras, and to every one of the Deputies of the said Superintendent, and shall be exercised by the said Superintendent and by every one of the said Deputies, according to the rules by which the said Criminal Judge, and the said Magistrate, are now bound to exercise the same.

Provided always, that in the exercise of this jurisdiction, the said Superintendent of Police and the said Deputies, shall not be subject to the orders of the Session Court of the Zillah of Chingleput, nor be bound, by any rule in the Madras Code of Regulations, to furnish any Calendar, List, or Report to that Court; but shall be immediately subject to the orders of the Court of Foujdaree Udalut; and shall furnish to the Court of Foujdaree Udalut, such Lists or Calendars of charges preferred before them, or of persons sentenced to punishment by them, as the said Court of Foujdaree Udalut may direct.

Provided also, that it shall be lawful for the said Superintendent, and every one of the said Deputies, in cases, in which the said Criminal Judge, or the said Magistrate, would now be empowered to commit any person to the gaol of Chingleput, to commit such person to any gaol within the Collectorate of Madras.

Provided also, that the provisions of Clause V, Section VIII, Regulation XV of 1803 of the Madras Code, shall be applicable to all convicts on whom sentence of imprisonment shall have been passed by the said Superintendent of Police, or by any of the said Deputies in the exercise of the jurisdiction transferred to them by this Act.—*Sec.* I—V, *Act* XXII, 1837.

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# SALT AND TOBACCO,

## REG. V OF 1831, &c.

A REGULATION *to modify and amend the provisions in force for the recovery of the penalties prescribed for certain breaches of the Salt and Tobacco Laws.*

*First.*—It shall not be lawful for any proprietor of land in the territories subject to the Presidency of Fort St. George, whether malguzari, or lakheraj, nor for any Zemindar, Merasidar, Farmer, Officer, or other person holding lands in farm, or in Amani, immediately of Government, or otherwise; nor for the Managers of land belonging to Minors, or disqualified landholders, to establish any Salt pans, or works of any description, for the manufacture of Salt, excepting on the account, or with the permission, of Government; any such Proprietor, Zemindar, Merasidar, Farmer, Officer, Ameen, or Manager, who shall establish, or connive at establishing, Salt pans, or other works for the manufacture of Salt, in the lands subject to his charge, contrary to the spirit of this regulation, shall be adjudged to pay a fine of 3,500 Rupees.

*Second.*—One-third of the amount of the fines, which may be levied under this Section, shall be paid to the person, or persons, who shall have furnished the information; another third to the Collectors, their Assistants, or Officers, by whom the offence shall have been detected and reported; and the remainder to Government.—*Sec.* VIII, *Reg.* I, 1805.

Proprietors, Farmers, and Renters of land, Managers of estates, Ameens, and Tahsildars, are required to give immediate information to the nearest Magistrate, or to the Collector, of any Salt that may be made in, or imported into, the lands of which they may respectively have charge, under pain of being liable to Government for a penalty of 25 per cent. on the value of Salt proved to have been so made or imported, with their knowledge or connivance; exclusively of the penalty of confiscation, should the Salt belong to them.—*Sec.* XIII, *Reg.* I, 1805.

*First.*—The Landholders, Proprietors, and Inhabitants of Cana-

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ra and Malabar, shall be at liberty to carry on the manufacture of Salt, as heretofore.

*Second.*—The Salt, so manufactured, shall be sold, by the Landholders, Proprietors, or Inhabitants, to the officers of Government alone, at a price to be determined with the consent of the respective parties, and with reference to the average sale price of several years, preceding the establishment of the Monopoly.—*Sec.* II, *Reg.* II, 1807.

All Salt which may be sold by a Proprietor, Landholder, Inhabitant, or Manufacturer, to any other than the officers of Government, or others authorized by Government to purchase it, shall be confiscated; and on a repetition of the offence, the party shall be liable to be fined, at the discretion of the Criminal Judge, in a sum not exceeding 3,500 Rupees.—*Sec.* III, *Reg.* II, 1807.

III. *First.*—Whenever a Magistrate shall receive information of a breach of the prohibition contained in Clause first, Section VIII, Regulation I of 1805, and shall see no cause to distrust the truth of the information, he shall issue a summons under his official seal and signature, to be served by any Police Officer, calling upon the person accused, to appear either in person or by Vakeel, to answer to the charge, on or before a certain day to be specified in the summons.

*Second.*—If the accused shall not appear before the Magistrate in person, or by Vakeel, according to the exigence of the summons served upon him, the Magistrate shall issue a warrant for his apprehension: and if he shall abscond or conceal himself so that he cannot be found, the Magistrate shall proceed as directed in the several clauses of Section XVII, Regulation IX of 1816.

*Third.*—On the appearance of the accused in person, or by Vakeel, the Magistrate shall enter into an investigation of the charge; and if upon the evidence, it shall appear to him that the charge is well founded, he shall require the accused to give bail, to an amount not exceeding the sum of four hundred Rupees, for his appearance in person or by Vakeel, to answer the charge before the Criminal Court, on or before a day to be specified in the bail bond; and if the bail required, be given, the witnesses shall be bound over to attend the Criminal Court on the day specified: but if the required bail be not given, the accused shall be taken into custody, and sent, with the witnesses and all the proceedings held in the case, to the Criminal Court.

*Fourth.*—The rules contained in the foregoing clauses, are hereby declared to be applicable to all cases in which Proprietors,

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Sec. III, Reg. V of 1831, Cl. 2. *Sec.* XVII, *Reg.* IX *of* 1816—which see at page 68.

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Farmers or Renters of land, or Managers of estates, shall be charged with the offence described in Section XIII, Regulation I of 1805; and to all cases in which a Proprietor, Landholder, Farmer or Renter of land, or any Manager of an estate, in Malabar or Canara, shall be charged with the offence specified in Section III, Regulation II of 1807; which is hereby declared applicable to Farmers or Renters of land, or Managers of estates, in common with Proprietors and Landholders.

*Fifth.*—Tahsildars, and other inferior Officers of Police, are hereby prohibited from taking cognizance of any of the offences before referred to, if committed by the parties specified in the preceding clauses; the primary cognizance of such offences being exclusively confined to the Magistrates and their Assistants.

*Sixth.*—On receiving information of any other breach of the Salt Laws, or of any breach of the Tobacco Laws, the Magistrate, and the subordinate Officers of Police, shall proceed against the person or persons accused, in the same manner as against persons charged with offences, the punishment of which rests with the Criminal Court.

Any person engaging in any clandestine or fraudulent transaction, with respect to Rowannahs, or passes; smuggling, or conniving at the smuggling of Salt; making, purchasing, obtaining, selling or weighing Salt, in an illicit manner, shall, on conviction, besides being fined at the discretion of the Criminal Judge, according to the circumstances of the case, be liable to permanent exclusion from the service of the Company.—*Sec.* XVIII, *Reg.* I, 1805.

In modification of Regulation V of 1831 of the Madras Code, all penalties prescribed by the Madras Code for any breaches of the Salt Laws, shall be recoverable before the Magistrate of the district: provided always, that it shall be lawful for any such Magistrate, before whom any person shall be charged with the commission of any offence against the Salt Laws, at his discretion, to proceed against such person in the same manner as against persons charged with offences the punishment of which rests with the Criminal Court. Provided also, that no Magistrate shall, under the authority of this Act, punish any offender by a fine exceeding 50 Rupees, or by imprisonment with or without labour for a longer period than thirty days.—*Act* XVII, 1840.

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Sec. III, Reg. V of 1831, Cl. 6. *Other breach of Salt Laws*—as specified in Sec XVIII, Reg. I of 1805. *Any breach of Tobacco Laws*—as set forth in the penal clauses of Reg. VII of 1811.

Sec. XVIII, Reg. I of 1805. *Being found in possession of spontaneous Salt*—was declared by the Foujdaree Udalut on the 20th Dec., 1836, to be punishable under this Section.

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The cultivation of Tobacco in the provinces of Malabar, Canara and Coimbatore, is hereby expressly prohibited; excepting under licenses issued by the authority of the Collectors.—*Cl.* 1, *Sec.* II, *Reg.* VII, 1811.

The above prohibition is extended to the province of Coimbatore.—*Cl.* 1, *Sec.* II, *Reg.* VIII, 1811.

*Fourth.*—Persons who shall cultivate without a license, or persons holding a license, who shall cultivate a greater quantity than that specified in their license, shall, on conviction, be adjudged to be fined at the discretion of the Criminal Judge, in a sum not exceeding three times the value of the Tobacco so cultivated; the value to be calculated at the Government monopoly price. The Tobacco so cultivated shall moreover, be confiscated, and in the case of a person holding a license, such license shall be forfeited.

*Fifth.*—The quantity specified in the license shall be calculated on the average crop: any quantity above or below the average crop, arising from peculiarity of season, shall form no ground of charge against the cultivator, provided the surplus or deficiency be reported to the local officer, for the information of the Collector.—*Sec.* II, *Reg.* VII, 1811.

The sale of Tobacco in the provinces of Malabar, Canara and Coimbatore, and the transit, export and import of it, whether by sea or land, excepting on account of Government, or with their express sanction, is hereby expressly prohibited; and all Tobacco sold, conveyed, exported, or imported, directly or indirectly, otherwise than as provided for in this regulation, shall be liable to seizure and confiscation; and the parties so offending shall be further liable to such fine and punishment as are hereinafter provided.—*Sec.* III, *Reg.* VII, 1811.

*First.*—All persons detected, directly or indirectly, in the illicit traffic, sale, import, or transit of Tobacco, shall, besides incurring the penalty of the seizure and confiscation of the Tobacco, be adjudged, on conviction, to be fined, at the discretion of the Criminal Judge, in a sum not exceeding three times the value of the Tobacco seized; the value to be calculated at the Government monopoly price.

*Second.*—In like manner, all persons convicted before the Criminal Judge, of affording aid and encouragement to such illicit traffic, by giving lodgement to the Tobacco within their houses, or otherwise assisting its clandestine importation, sale, or transit, shall be adjudged to pay the same fine as is prescribed in clause first of this Section; that is to say, a sum not exceeding three times the value, at the monopoly price, of the Tobacco which may be either found in their possession, or which, to the satisfaction of

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the Criminal Judge, may be proved to have been smuggled through their connivance and assistance.—*Sec.* VI, *Reg.* VII, 1811.

Any persons, to the number of three or more, who shall go forth with any offensive weapon, for the purpose of smuggling Tobacco, or in order to be aiding and assisting in the illicit transit, export, or import, of that article; or who shall obstruct, oppose, or resist the seizure of Tobacco so smuggled, or attempted to be smuggled; or shall be aiding or assisting in rescuing or taking away the same after seizure; or in preventing the apprehending any person so offending; or in rescuing any person who shall have been apprehended for such offences; shall be committed for trial before the Session Court: and, on due conviction thereof, shall be adjudged to be imprisoned and kept to hard labour, for a space not exceeding three years. Provided always that if, on consideration of any circumstance of violence, or other criminal act, appearing on the trial, to aggravate the guilt of the parties, it shall in the judgment of the Court be just and necessary to inflict a more severe punishment, than imprisonment and labour for the term of three years, the offenders shall, in all such cases, be liable to the penalties declared in the several clauses of Section IV, Reg. XV of 1803, for similar acts of criminality, committed in prosecution of robbery by open violence.—*Sec.* VII, *Reg.* VII, 1811.

*First.*—Tobacco shall not be conveyed or transported, by land or water, within the provinces, without a rowannah from the proper officer.

*Fourth.*—If any person shall attempt to transport a greater quantity than that specified in the rowannah, the whole shall be liable to seizure and confiscation; and for the excess, above the quantity specified in the rowannah, he shall be liable to the fine provided for by Clause first, Section VI, Regulation VII of 1811. —*Sec.* IX, *Reg.* VII, 1811.

*First.*—Any person engaged in any clandestine, or fraudulent, transaction, with respect to rowannahs or passes, smuggling, or conniving at smuggling, of Tobacco, purchasing, obtaining, selling, or weighing Tobacco, in an illicit manner, shall, on conviction, besides being fined at the discretion of the Criminal Judge, according to the circumstances of the case, be liable, if in the service of the Company, to be declared incapable of serving Government in any capacity.

*Second.*—But in cases where any of the officers of Government shall be guilty of a criminal abuse of their trust, such as appropriating seizures of smuggled Tobacco to their own use and emolument, employing persons to carry on this traffic, or extorting contributions from smugglers, to allow their booty to pass unmo-

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lested; the offence shall be considered of sufficient criminality to be brought forward before the Session Court; and, on conviction, the offenders shall be sentenced to imprisonment and hard labour, for a space not exceeding three years, and shall further be liable to prosecution in the Civil Court, for the recovery, on account of Government, of the fruits of their peculations and misdemeanors. —*Sec.* XI, *Reg.* VII, 1811.

One-third of the amount of all fines, which may be levied under this regulation, shall be paid to the person, or persons, who shall have furnished the information; another third to the Collectors, or their Assistants, by whom the offence shall have been detected and reported; and the remainder to Government.—*Sec.* XIII, *Reg.* VII, 1811.

Whenever the Criminal Judge shall deem any information lodged against persons for being concerned in dealings in contraband Tobacco, or in the illicit cultivation of that article, to be groundless and false, he shall cause the informer to make good, to the person accused, all charges which may have been incurred by him in consequence of the false information so lodged against him, together with such damages as the Court shall deem it just to award, upon consideration of the circumstances of the case.—*Sec.* XV, *Reg.* VII, 1811.

IV. *First.*—The Criminal Courts, in the trial of charges brought before them under Section III of this regulation, shall proceed as directed in Clause sixth, Section II, Regulation VI of 1822; and on conviction, shall sentence the offender to pay the penalty specifically prescribed for the offence; or in other cases, such penalty as may appear just and proper; provided however, that when the penalty to be adjudged, is not by the Regulations specifically defined or limited in its amount, it shall in no case exceed the sum of two hundred Rupees. If the offender shall omit or refuse to pay the fine, the Criminal Court shall sentence him to imprisonment in the jail for debtors, or in the Criminal jail, according to the character and situation in life of the offender, until the fine be paid; provided however, that such imprisonment shall in no case exceed the term of two years.

*Second.*—All prosecutions before the Criminal Judge under this Regulation, shall be conducted by the Vakeel of Government, to whom the Collector shall in each case furnish such instructions as may appear necessary.

V. *First.*—If a person who has given the bail required by Clause third, Section III of this Regulation, shall fail to appear in person or by Vakeel, before the Criminal Court on the day specified in the bail bond, the charge shall be tried exparte; and if the

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charge be established by the evidence, the Criminal Court shall forthwith issue its warrant for levying the fine adjudged; on default of the immediate payment of which, the offender shall be taken into custody, and imprisoned as directed in the preceding Section.

*Second.*—In the cases provided for in the preceding clause, it shall be the duty of the Criminal Court, whether the accused be convicted or acquitted, to declare the security given by the accused to be forfeited; and the Criminal Court shall forthwith proceed in the ordinary manner to levy the amount from the sureties.

VI. All proceedings held by the Criminal Courts under this Regulation, shall be subject to revision by the Session Courts, and by the Court of Foujdaree Udalut; and those Courts are hereby empowered and directed to call for the proceedings in any case in which, upon the petition of a party considering himself aggrieved, or upon other information before them, such revision may appear requisite for the ends of justice.

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# CUSTOMS,

## ACT No. VI. of 1844, &c.

XV. If any Chokee Officer shall needlessly and vexatiously injure goods under the pretence of examination, or in the course of his examination; or shall wrongfully detain goods for which there shall be produced a sufficient certificate; such Officer shall, on conviction before the Collector of Customs, or before any Magistrate or Joint Magistrate, be liable to imprisonment for a term not exceeding six months, and to fine not exceeding five-hundred Rupees, commutable if not paid to imprisonment for a further period of six months.

*First.*—Criminal Judges—*Sec. XLV, Reg. IX*, 1816—are empowered to hear and determine all charges against persons for being concerned in any attempt to defraud the customs, or for receiving, purchasing, or secreting any article liable to duties, knowing it to have been smuggled; and to punish the offenders, on conviction, by imposing upon them such fine to Government, as the case may seem to deserve: but the fine is in no case to exceed the sum of one-hundred Rupees.

*Second.*—When persons convicted of defrauding the Customs

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Act VI, 1844. By this enactment all Transit or Inland Custom Duties, and all Town Duties, within the Presidency of Madras, were abolished. And the only Custom Duties now leviable are: 1st, those on goods passing by land into or out of Foreign European Settlements adjacent to the Presidency. 2d, or into or out of such Territories of any Native Chief, not subject to the jurisdiction of the Courts of the Presidency, as the Governor in Council may by notice in the *Gazette* declare to be "foreign"—and 3d, Duties on Exports and Imports by sea. For certain infractions of the provisions of the Act, Goods are declared liable to confiscation by the Collectors of Customs; and some other violations of the law, the same Officers are authorized to punish by fine, or by imprisonment, and in some instances both. Such Sections are omitted, as falling within the Revenue Code; and those parts only of this Act, and other Regulations still in force, which concern the Magistracy and Criminal Courts, are here inserted.

Sec. XV. *Chokee.*—That is "Frontier Chokee."

Sec. XXI, Reg. I, 1812. This Section remains in force—only such parts of the Regulation as prescribed the levy of duties having been rescinded by Sec. I, Act VI of 1844—and is applicable to offences, of the nature contemplated, against those branches of the Customs, still remaining: while Sections LXIV and LXVII extend the powers of the Criminal Courts in the particular cases therein specified.

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may omit or refuse to pay the amount of the fine awarded against them, or when persons may be convicted of a repetition of the offences described in the preceding clause, Criminal Judges are empowered to commit them to the jail of the Zillah, to be kept to hard labour on the public works for a term not exceeding three months, according as they may think proper, upon consideration of the circumstances of the case. Provided, however, that the authority hereby given being intended to restrain habits of fraud among the idle and dissolute classes of society, and persons of notorious bad characters, who may be found to be incorrigible by other means, Criminal Judges shall be careful not to adjudge to hard labour on the public works any person whose situation and circumstances in life may appear to exempt him from this part of the penalty. In this case the imprisonment shall be held as an equivalent to the fine; and, at the expiration of the period fixed, the party shall be discharged.—*Sec.* XXI, *Reg.* I, 1812.

No collections whatever, either as customs, duties, commissions, fees, or under any other denomination, shall be levied by any of the officers employed at the Custom Houses or Chokies, excepting such collections as are, or may be authorized by this regulation, or by any other regulation which shall be hereafter enacted in the prescribed manner.—*Sec.* XXII, *Reg.* I, 1812.

Any native officer proved to have been guilty of a breach of the rule contained in the foregoing Section, will of course be liable to be dismissed from his employment; complaints against native officers employed in the collection of the customs for offences of this nature, shall moreover be considered cognizable by the Magistrates, and any such native officer, on being convicted before a Magistrate, of having detained, or stopped, goods in any unauthorized manner; or of having exacted, under any plea or pretence whatever, as present, fee, or other consideration for the passage of goods or otherwise, in violation of the regulations of Government, shall be deemed guilty of extortion * * * * The party aggrieved, shall, at the same time, be at liberty to prosecute the offender for damages in the Civil Court.—*Sec.* XXIII, *Reg.* I, 1812.

And the offender shall be liable to be sentenced by the Magistrate under the limitations with regard to the extent of punishment prescribed by Sections XXXII and XXXIII, Reg. IX, 1816; but in all cases, where the Magistrate may deem the punishment which he is authorized to inflict, inadequate to the offence, he shall send the witnesses and the offender, with the proceedings on the case, to the Criminal Judge of the zillah.—*Sec.* XLV, *Reg.* IX, 1816.

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Sec. XXII—XXIV, Reg. I, 1812. These penal Sections also remain in force, and give the Magistrate jurisdiction in cases of petty offences of the nature specified.

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All native persons, not being officers employed by Government in the collection of the Government customs, or authorized by any regulation to collect customs or duties, who shall exact customs, or duties, of any denomination, on any pretence whatsoever whether as principals or agents, shall likewise be deemed guilty of extortion, and, on conviction before a Magistrate, shall be liable to the penalties of fine and imprisonment to the same extent, as the Magistrate, empowered to adjudge against native officers convicted of extortion under the preceding Section, and the party aggrieved shall, in like manner, be also at liberty to prosecute the offender for damages in the Civil Court; but nothing contained herein shall be construed to authorize the Magistrate to inflict corporal punishment in any such case, on any ground whatever.—*Sec.* XXIV, *Reg.* I, 1812.

LXIV. Whoever intentionally obstructs any officer in the exercise of any powers given by this Act to such officer, shall be punished with imprisonment for a term not exceeding six months, or fine not exceeding one thousand rupees, or both.

LXV. Whoever, being an officer appointed under the authority of this Act, shall accept, or obtain, or attempt to obtain from any person any property as a consideration for doing or forbearing to do any official act, shall be punished with imprisonment for a term not exceeding two years, or fine, or both.

LXVI. Whoever, being an officer appointed under the authority of this Act, practices, or attempts to practice, any fraud for the purpose of injuring the customs revenue, or abets, or connives at any such fraud, or at any attempt to practice any such fraud, shall be punished with imprisonment for a term not exceeding two years, or fine, or both.

LXVII. Whoever, not being an officer appointed under this Act, or authorized by any Regulation to collect customs or duties, shall exact customs or duties, of any denomination on any pretence whatsoever, whether as principal or agent, shall be punished with imprisonment for a term not exceeding two years, or fine, or both; and furthermore shall be liable for such damages as may be obtained against him, on the suit of the party injured, by action in any of the Civil Courts of the Presidency of Fort St. George.

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Sec. LXIV—LXVII. These Sections govern the Criminal Courts upon committals, made to them by the Magistracy, for the offences therein specified.

# STATE OFFENCES,

## ACT No. V. of 1841, &c.

An Act *for the greater uniformity of the process upon Trials for State Offences, and the amendment of such process in certain cases.*

I. Whereas it is expedient that the rules of process for the trials of state offences should be modified with a view to uniformity at the different Presidencies; and whereas some of the rules heretofore in force at particular Presidencies require amendment;—

It is hereby enacted, in modification of all regulations and parts of regulations affecting process upon trials for state offences, that it shall be competent for the ordinary tribunals to try charges of treason, rebellion, or other crime against the state.

II. It shall be competent for the Government of any Presidency to issue a commission for the trial of any offences of treason, rebellion, or crime against the state, by one or more Judges, together with such Law Officers as shall be required, or without any such Officer, according as it may be deemed expedient.

III. The Courts convened under such commissions are to try the prisoners brought before them in the same manner as in trials before the Ordinary Courts; and shall exercise all powers and authorities vested in such Courts, except that their sentence, whether of acquittal or punishment, shall in every instance be reported with their proceedings to the highest Court of the East India Company for Criminal matters of the Presidency, previous to carrying the same into execution; and they are to be guided as to the place where they are to assemble, the persons to be tried by them, and all other particulars not provided by any Regulation of the respective Presidencies, or by any Act of the Governor General of India in Council, by the special orders which they may receive from the executive Government, or from the highest Court of the East India Company for Criminal matters in the Presidency.

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IV. In case of the death, or of the absence from indisposition or other cause, of any of the Judges, or Law Officers of the Courts which may be appointed to try offenders under this Regulation, the remaining Judge or Judges, or Law Officer or Officers, shall be competent to form a Court, and proceed with the trial or trials, until provision can be made by the Government of the Presidency for supplying the place of such Judge or Judges, or Law Officer or Officers, if any such provision shall be deemed necessary; or, if no such provision be made, the powers and proceedings of the said Courts shall not be affected by the death or absence of such Judge or Judges, or Law Officer or Officers.

V. The highest Courts of the East India Company for Criminal matters of the respective Presidencies, on the receipt of any trials referred to them under this Act, are to proceed thereupon according to the rules in force with respect to other trials referred to them; except that they are in every instance to report their sentences to the executive Government of the Presidency for the time being; and are to wait the orders of Government for the period of three calendar months, before they direct their sentence to be carried into execution.

All persons who may be convicted of Treason or Rebellion, either by the ordinary Courts of Judicature, or before a special commission appointed under *Act V of* 1841, shall be liable to a sentence of death.—*Sec.* II, *Reg.* I, 1834.

Nothing however in this Regulation is meant to restrict the Foujdaree Udalut from passing such other mitigated sentence as may appear to them necessary and just.—*Sec.* III, *Reg.* I, 1834.

VI. The Magistrates of the several Zillahs and Cities, where any person or persons shall be charged with the crimes mentioned in this Act, shall give immediate notice thereof to the Government of the Presidency to which their several Districts or Cities belong; and shall pay immediate and strict attention to all orders which may be transmitted to them by their respective Governments for the apprehension of persons charged as aforesaid, or for making any enquiry respecting such persons, or for committing them to take their trials before the Ordinary Courts, or before the Special Courts described in this Act.

VII. This Act shall not be construed to alter or affect the jurisdiction of any of Her Majesty's Supreme Courts of Justice.

The Governor in Council is hereby declared to be empowered to establish martial law, within the territories subject to the Govern-

Sec. II and III, Reg. I, 1834. Act V of 1841, merely lays down new rules of procedure. These Sections, prescribing the punishment on conviction, remain in force—for examples of sentences under them, *see* C. R. Nos. 681—686, pp. 331—334.

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ment of the Presidency of Fort St. George, for any period of time, while the British Government in India shall be engaged in war with any Native or other Power; as well as during the existence of open rebellion against the authority of the Government in any part of the territories aforesaid; and also to direct the immediate trial, by Courts Martial, of all persons, owing allegiance to the British Government, either in consequence of their having been born, of their having served under it in any capacity, or of their being resident within its territories, and under its protection, who shall be taken in arms in open hostility to the British Government; or in the act of opposing, by force of arms, the authority of the same; or in the actual commission of any overt act of rebellion against the state; or in the act of conspiring with, or of openly aiding and abetting, the enemies of the British Government, within any part of the said territories.—*Sec.* II, *Reg.* VII, 1808.

It is hereby further declared, that any person born, or residing, under the protection of the British Government, within the territories aforesaid, and consequently owing allegiance to the said Government, who, in violation of the obligation of such allegiance, shall be guilty of any of the crimes specified in the preceding section, and who shall be convicted thereof by the sentence of a Court Martial, during the establishment of martial law, shall be liable to immediate punishment of death; and shall suffer the same accordingly, by being hanged by the neck until he is dead. All persons who shall, in such cases, be adjudged, by a Court Martial, to be guilty of any of the crimes specified in this regulation, shall also forfeit to the British Government all property and effects, real and personal, which they shall have possessed within its territories, at the time when the crime of which they may be convicted shall have been committed.—*Sec.* III, *Reg.* VII, 1808.

The Governor in Council shall not be precluded, by this regulation, from causing persons charged with any of the offences described in the present regulation, to be brought to trial, at any time, before the ordinary Courts of Judicature, or before any special Court appointed for the trial of such offences, under *Act V of* 1841, instead of causing such persons to be tried by Courts Martial, in any cases wherein the latter mode of trial shall not appear to be indispensably necessary.—*Sec.* IV, *Reg.* VII, 1808.

*First.*—When the reasons stated in the preamble of this Regulation, may seem to the Governor in Council to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment, under the authority of the Governor in

Sec. II, Reg. II, 1819. *Reasons, &c.*—Reasons of State Policy.

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Council, and under the hand of the Chief Secretary, or of one of the Secretaries to Government, shall be issued to the officer in whose custody such person is to be placed.

*Second.*—The warrant of commitment shall be according to the form prescribed in the Appendix to this Regulation.

*Third.*—The warrant of commitment shall be sufficient authority for the detention of any state prisoner, in any fortress, jail, or other place, within the territories subject to the Presidency of Fort St. George.—*Sec.* II, *Reg.* II, 1819.

Every officer in whose custody any state prisoner may be placed shall, on the 1st of January and 1st of July of each year, submit a report to the Governor in Council, through the Chief Secretary to Government, on the conduct, the health and the comfort of such state prisoner, in order that the Governor in Council may determine whether the orders for his detention shall continue in force, or shall be modified.—*Sec.* III, *Reg.* II, 1819.

*First.*—When any state prisoner is in the custody of a Criminal Judge, the Session Judge is to visit such state prisoner, and to issue any orders concerning the treatment of the state prisoner which may appear advisable, provided they be not inconsistent with the orders of the Governor in Council issued on that head.

*Second.*—When any state prisoner is placed in the custody of any public officer not being a Criminal Judge, the Governor in Council will instruct either the Criminal or Session Judge, or any other public officer, not being the person in whose custody the prisoner may be placed, to visit such prisoner at stated periods, and to submit a report to Government, regarding the health and treatment of such prisoner.—*Sec.* IV, *Reg.* II, 1819.

The officer, in whose custody any state prisoner may be placed, is to forward, with such observations as may appear necessary, every representation which such state prisoner may, from time to time, be desirous of submitting to the Governor in Council.—*Sec.* V, *Reg.* II, 1819.

Every officer, in whose custody any state prisoner may be placed, shall, as soon after taking such prisoner into his custody as may be practicable, report to the Governor in Council, whether the degree of confinement to which he may be subjected, appears liable to injure his health; and whether the allowance fixed for his support, be adequate to the supply of his own wants, and those of his family according to their rank in life.—*Sec.* VI, *Reg.* II, 1819.

Every officer, in whose custody any state prisoner may be placed, shall take care that the allowance fixed for the support of such state prisoner is duly appropriated to that object.—*Sec.* VII, *Reg.* II, 1819.

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Whenever the Governor in Council for the reasons declared in the preamble to this Regulation, shall judge it necessary to attach the estates or lands of any Zemindar, Jagheerdar, Talookdar, or other person, without any previous decision of a Court of Justice, or other judicial proceeding, the grounds on which the resolution of Government may have been adopted, and such other information connected with the case as may appear essential, shall be communicated, under the hand of one of the Secretaries to Government, to the Civil and Session Judge of the district, in which the lands or estates may be situated ; and to the Sudder and Foujdaree Udalut.—*Sec.* IX, *Reg.* II, 1819.

*First.*—The lands or estates which may be so temporarily attached, shall be held under the management of the officers of Government in the revenue department, and the collections shall be made and adjusted on the same principles as those of other estates held under Khas management.

*Second.*—Such lands or estates shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realization of fines or otherwise, during the period in which they may be so held under attachment.

*Third.*—In the cases mentioned in the preceding clause, the Government will make such arrangements as may be fair and equitable for the satisfaction of the decrees of the Civil Courts.—*Sec.* X, *Reg.* II, 1819.

Whenever the Governor in Council shall be of opinion that the circumstances which rendered the attachment of such estate necessary, have ceased to operate, and that the management of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the revenue authorities will be directed to release the estate from attachment, to adjust the accounts of the collections, during the period in which they may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estate which may have accumulated during the attachment.—*Sec.* XI, *Reg.* II, 1819.

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## APPENDIX.

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### Form of Warrant of Commitment.

*To the* (here insert the Officer's designation.)

Whereas the Governor in Council for good and sufficient reasons, has seen fit to determine that (here insert the state prisoner's name) shall be placed under personal restraint at (here insert the

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name of the place), you are hereby required and commanded, in pursuance of that determination, to receive the person above named into your custody, and to deal with him in conformity to the orders of the Governor in Council, and the provisions of Regulation II of 1819.

FORT ST. GEORGE, *the*

By order of the Governor in Council,

A. B.

*Chief Secy. to Government.*

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# JUSTICE OF THE PEACE,

## GENERAL OBSERVATIONS, &c.

*1st.* Jurisdiction.—The jurisdiction of Justices of the Peace in India extends generally over *the whole Presidency*, for which they are respectively appointed: so that they can exercise their functions in any part of it. But it does not extend to *all persons* throughout the Presidency, but only to the three following Classes:—First, to *all persons whatever*, whether British or Native subjects, in respect of all offensive acts or conduct committed at the several seats of Government, that is, within those districts which are marked out as limits of the *ordinary* jurisdiction of the respective Supreme Courts: Secondly, to all British subjects (as contra-distinguished from those of Native descent) resident in any part of the Presidency—except that, as regards crimes and offences triable by jury, and committed by *British Officers* or *Soldiers*, at places more than 120 miles distance from the Presidency or seat of Government, their interference is not commonly required, inasmuch as all such crimes are to be enquired into, and punished by course of Court Martial: and Thirdly, to all persons who may have committed crimes or offences *at Sea.—Norton, page* 22.

*2nd.* Functions.—The Functions of a Justice of the Peace in India are threefold—First, the trial and punishment of offences by "Summary Conviction," or without jury. Secondly, the investigation of charges, in view to the committal or discharge of the accused party. Thirdly, the Prevention of crimes and breaches of the Peace.

Summary Conviction must be either under "Statute," or "Act of the Supreme Government."

The Statutes under which such powers may be exercised, are—1st, The Navigation Acts, and those relating to the Registry of Ships,—2dly, The Seaman's Act, 5 and 6, Will. 4th, c. 19,—3dly, The Criminal Act for India, 9, Geo. 4th, c. 74.

The Seaman's Act provides for the Summary trial and punishment of the following offences—1st, The taking Seamen to Sea without making an agreement in writing with them, according to the form prescribed in the Statute, and reading it to them—2d, The misbehaviour of Seamen in refusing to join their Ships, or in absenting themselves therefrom without leave, or by neglect of their duty on board, or by absolute desertion,—3d, The wilfully harbouring of Seamen who have deserted,—4th, The refusal of a Master to pay the Seamen's wages at the times and in the manner prescribed by the Statute,—5th, The refusal by the Master to give a Seaman a Certificate of his Discharge—and 6th, All assaults and batteries on board Ship: which last offences must (except in Bengal, where by Acts of the Supreme Government *all* authorities vested in two Justices may be executed by one) be tried before two Justices.

The Indian Criminal Act in like manner provides for the punishment of

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the following offences—1st, Having more than *five* pieces *counterfeit coin* at one time, without lawful excuse; 2d, Having *shipwrecked goods* without any excuse, or account to give for such possession; 3d, *Offering such shipwrecked goods for Sale* under suspicious circumstances, and without being able to give any good account of them; 4th, *Stealing dogs* or other beasts, or birds, which are not ordinarily animals held *in property*, but which happen to have owners who keep them; 5th, The receiving (knowingly) any property, the stealing or taking of which is as above shewn punishable by *Summary Conviction*; 6th, The *breaking down of dams or bunds* of places used to confine fish; and 7th, The *aiding* and assisting in any of these offences.—*Norton, pp.* 17 and 18.

The Acts of the Supreme Government, under which Justices of the Peace are authorized to pronounce "Summary Convictions," are as follows:

Act XVII. of 1837.—The Post Office Act, Sections V, IX, X, XV, XVI and XXII, which see pp. 92 and 93.

,, II. of 1839.—Prescribing mode of levying fines imposed by virtue of any acts of the Supreme Government, which see p. 83.

,, XIV. of 1839.—Prohibiting contracts for labour without the territories of the East India Company, which see at p. 90.

,, XXII. of 1840.—Providing for the punishment of vagrants extorting alms by offensive and disgusting exhibitions and practices in the town of Madras,—extended to Cochin.

,, X. of 1841.—For the Registry of Ships entitled to navigate as British registered Ships within the limits of the East India Company's Charter.

,, XVIII. of 1841.—Prohibiting Exportation of Arms, Ammunition and Military Stores, and storing of Gun powder, &c. which see at p. 86.

,, XV. of 1842 & XXI. of 1844.—The Emigration Acts, in regard to which see note on Act XIV. of 1839, p. 90.

,, V. of 1844.—Prohibiting Lotteries, which see at p. 95.

In discharging their duties under the above Statutes, Justices of the Peace will of course consult those Enactments at the time; and they are therefore only referred to here: the majority of them are seldom required by a Justice of the Peace in the Provinces, and their insertion would unnecessarily swell the bulk of this volume. Of the Acts, several have already been inserted under the head of "Magistrate," while the Ship registration and Emigration Acts, are, for the above reasons, only noted for reference.

The Enactments prescribing who shall or may be Justices of the Peace, &c., will be found in the following pages, and after them some general "Suggestions" and instructions for the assistance and guidance of Justices of the Peace, in the exercise of their functions, accompanied by the requisite Forms, &c.

As a general rule a Justice ought not to interfere in any case in which he is personally interested; should he however be assaulted or abused in the execution of his office, and no other Justice be nigh, he may immediately commit the assailant until he find sureties of the Peace for good behaviour.

Act XVII of 1837.—It has been ruled in Bengal, that Sections 33 and 35 of this Act are not applicable to European British subjects resident in the Mofussil; as these persons have not, by any Act of the Legislature, been made amenable to the local authorities, in the administration of the penal enactments of the Government of India.

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# JUSTICE OF THE PEACE—ACTS &c. RELATING TO,

Magistrates are required to take the prescribed Oath of qualification to act as Justice of the Peace, within three months from the date of their appointment.—*Sec.* XLVII, *Reg.* IX, 1816.

And Subordinate Judges.—*Sec.* XL, *Reg.* X, 1816.

I. All persons who are or shall be nominated and appointed in any commissions of the Peace, shall be capable of acting as Justices of the Peace in every respect, according to the tenor of such commission, upon taking and subscribing in any Civil or Criminal Court of Justice, within the places in and for which any such commission shall have issued, before the officer presiding in such Court, whether such officer be a Justice of the Peace or not, the Oaths appointed to be taken by Justices of the Peace; and the subscription of such persons to the said Oaths, shall be deposited and kept with the records of the Courts of Justice, in which the said Oaths shall have been administered.

II. Every Justice of the Peace who, before the passing of this Act, shall have had administered to him the Oaths of qualification by any other Justice of the Peace, shall be deemed to have been duly qualified to act as a Justice of the Peace, from the time of taking such Oath, and shall continue so qualified notwithstanding such Oath may not have been taken in a Court of Justice as required by any previous Law, or by this Act.—*Act* XVI, 1841.

The Supreme Court of Judicature of each of the said Presidencies shall and may, from time to time upon the order or warrant of the executive Government of such Presidency, issue separate commissions to any persons not named in the general commission of the Peace last issued, who by law are capable of being appointed to the office of Justice of the Peace, and who shall be nominated and appointed by such executive Government to act as Justices of the Peace within and for, such Presidency, and the places subordinate thereto, or within and for, the Presidency Town. And all such commissions shall be issued in the name of the Queen's Majesty, her Heirs and successors, under the seal of the Supreme Court, and tested in the name of the Chief Justice of such Court, and shall be filed of record in the Court of Oyer and Terminer of the Presidency, or place wherein and for which, the same shall be issued, as supplementary to the General Commission of the Peace last issued, which shall remain in full force.—*Act No.* VI. *of* 1845.

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" Whereas His Majesty's British subjects resident in the British " territories in India, without the towns of Calcutta, Madras, and " the town and island of Bombay, are now, by law, subject only " to the jurisdiction of His Majesty's courts at Calcutta, Madras, " and Bombay respectively, and are exempted from the jurisdic- " tion of the courts established by the said United Company within " the said territories, to which all other persons, whether natives " or other inhabitants in the said territories without the limits of " the towns aforesaid, are amenable : and whereas it is expedient " to provide more effectual redress for the native inhabitants of " the said territories, in the case of assault, forcible entry, or other " injury accompanied with force, which may be committed by " British subjects at a distance from the places where His Majes- " ty's courts are established, be it therefore enacted, that it shall " and may be lawful for any native of India, resident in the East

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53 Geo. III, Cap. 155, Sec. 105. Though under this enactment a *Magistrate* not being a "Justice of the Peace" has jurisdiction,—yet as all Magistrates must qualify as Justices of the Peace, at all events within three months after their appointment, and as complaints made under this provision, may always result in circumstances which render necessary the exercise of the powers of a Justice of the Peace—in the committal of the accused—it seemed more convenient to insert it here than under the head of Magistrate. The Government it is to be observed have directed—G. O. 23d Dec. 1834, *Fort St. George Gazette* 1834, *p.* 916—that complaints, of the nature herein referred to, against European British subjects, shall, if at a Court Station, be preferred to the "Criminal Judge" in his capacity of "Justice of the Peace," rather than to the "Magistrate," under the jurisdiction hereby given to him. An appeal, whether from the Magistrate acting as such under this law, or from him, or the Criminal Judge acting as Justice of the Peace, lies to the Session Judge, whose decision is final, and cannot be reversed or quashed by Writ of Certiorari.—*See Act* IV, 1843, at p. 170.

This enactment applies only to cases of assault and trespass by European British subjects on Natives, and not to cases where both parties are Europeans.—*F. U.* 26*th May* 1837, *C. R. No.* 633.

In connexion with this subject, the following constructions of the Nizamut Udalut in Bengal will be interesting:

There appears no reason why a European British subject, charged by a Native with assault under 53 Geo. III, Cap. 155, Sec. 105, should not be allowed the privilege of appearing by Attorney, which is enjoyed by Natives.—*Cons. No.* 570, 30*th July* 1830.

An assistant to a Magistrate is not competent to take cognizance of complaints against European British subjects to the extent specified in 53 Geo. III, Cap. 155, Sec. 105, as the power in question can only be exercised by a person possessing the full powers of Magistrate.—*Cons. No.* 595, 17*th June* 1831.

Any Officer exercising the full powers of Joint Magistrate, is competent to take cognizance of charges against European British subjects.—53 *Geo.* III, *Cap.* 155, *Sec.* 105; *C. O. No.* 57, 3*d Sept.* 1830; *Cons. No.* 900, 12*th Sept.* 1834.

If two or more distinct offences of this nature be charged separately, the Court are aware of no reason why the sentences on conviction should not also be separate. The Court further observed that in such cases, confinement was authorized only in default of payment of fine; and if on investigation, the Magistrate was of opinion that the offender ought to be brought to trial before the Supreme Court, he should proceed in the usual manner, referring the case for the information and orders of Government.—*Cons. No.* 632, 8*th April* 1831.

On requiring security on a recognizance to keep the peace from a European British subject, the Magistrate is not restricted as to the amount by the penalty he is authorized to levy from such European British subject by 53 Geo. III, Cap. 155, Sec. 105, as in the event of a breach of the peace occurring, the Magistrate cannot levy the penalty of the bond, the only place of proceeding for the forfeiture of the penalty is the Supreme Court. —*Cons. No.* 826, 6*th Sept.* 1833.

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"Indies, or parts aforesaid, and without the said towns, in case of "any assault, forcible entry, or other injury accompanied with "force, alleged to have been done against his person or property "by a British subject, to complain of such assault, forcible entry, "or other injury accompanied with force, not being felony, to the "magistrate of the zillah or district where the alleged offender "shall be resident, or in which such offence shall have been com-"mitted; and that such magistrate shall have power and autho-"rity, at the instance of the person so complaining, to take cog-"nizance of such complaint, to hear parties, to examine witnesses, "and, having taken in writing the substance of the complaint, "defence, and evidence, to acquit or convict the person accused; "and, in case of conviction, to inflict upon such person a suitable "punishment, by fine, not exceeding five hundred rupees, to be "levied in case of non-payment by warrant under the hand of the "said magistrate, and upon any property of the party so convict-"ed, which may be found within the said district; and if no such "property shall be found within the said district, then it shall be "lawful for the said magistrate, by warrant also under his hand, "to commit such offender to some place of confinement within the "said zillah or district, which in the judgment of the said magis-"trate shall be fit for receiving such offender; or if there shall be "no fit place of confinement, then to the gaol of the presidency, "to remain there for a period not exceeding two months, unless "such fine shall be sooner paid; and it shall be lawful for the "said magistrate to award the whole or any portion of such fine "to the party aggrieved, by way of satisfaction for such injury: "provided always, that in all cases of conviction of a British sub-"ject, under the provision hereinbefore contained, the magistrate "before whom such conviction shall take place shall forthwith "transmit copies of such conviction, and of all depositions and "other proceedings relative thereto, to the Government to which "the place wherein the offence was committed is or shall be su-"bordinate: provided also, that all such fines shall be paid in the "first instance to the magistrate before whom the party offending "shall be convicted, and the amount thereof, after making such "satisfaction to the party aggrieved, as aforesaid, if any, shall be "transmitted by such magistrate to the clerk of the crown, or "other officer to whom it belongs to receive fines in His Majesty's "court of oyer and terminer and gaol delivery for the province "within which the offence shall have been committed; and such "fines shall and may be disposed of in the same manner as other "fines imposed by such court of oyer and terminer and gaol deli-"very: provided also, that all such convictions shall and may be "removable by writ of certiorari into the said court of oyer and

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"terminer and gaol delivery respectively, in the same manner, and "upon the same terms and conditions, and shall be proceeded up- "on in the same manner in every respect as is directed in the said "Act of the thirty-third year of His Majesty's reign, with regard "to other convictions before justices of peace in the British settle- "ments or territories in India: provided also, that nothing herein "contained shall extend, or be construed to extend to prevent such "magistrate from committing or holding to bail any British sub- "ject, charged with any such offence before him, in the same man- "ner as such British subject might have been committed or holden "to bail if this Act had not been passed, where the offence charged "shall appear to such magistrate to be of so aggravated a nature "as to be a fit subject for prosecution in any of His Majesty's courts "to which such British subject may be amenable."—53 *Geo.* III, *Cap.* 155, *Sec.* 105.—*Sec.* II, *Reg.* II, 1820.

Whereas, in many cases provided by law, offences may be prosecuted before magistrates not acting within the local limits of the jurisdiction of Her Majesty's Supreme Courts, and which such magistrates may take cognizance of, either in their magisterial capacity under the regulations, or as Justices of the Peace. And whereas the appeal from convictions before magistrates acting in their magisterial capacities, and from the like convictions before Justices of the Peace, are subject to different rules. And whereas in all cases of convictions before Justices of the Peace in the Mofussil, and before magistrates exercising jurisdiction under the provisions of Statute 53, Geo. III, Cap. 155, in cases of assault, forcible entries, or other injuries accompanied with force committed by British subjects, the law as to appeals requires amendment.—It is hereby enacted, that an appeal shall lie from all sentences passed by any Justice of the Peace, acting without the local limits of any of Her Majesty's Supreme Courts, upon convictions had before him for any offence, and from all sentences passed by any magistrate upon convictions had before him exercising such jurisdiction as aforesaid, to the same authority and subject to the same rules, as are provided by the Regulations and Acts of the Government in the case of sentences passed by magistrates in the exercise of their ordinary jurisdiction. And cases so made the subject of appeal shall not be afterwards liable to revision by means of a Writ of Certiorari.—And it is hereby provided, that nothing in this Act contained shall be held to take away the power of quashing any conviction by means of a Writ of Certiorari, in any other case than where there has been such appeal as aforesaid.—*Act No.* IV *of* 1843.

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# SUGGESTIONS FOR JUSTICE OF THE PEACE.

1. Where the party complaining applies for a Warrant, or where before granting a summons, an information upon oath is proper, the party complaining, or his witness, should be examined upon oath; but, before administering the oath, it is recommended that the Magistrate shall ascertain, by a short inquiry, who, and what the witness is, and the facts to which he can depose, by permitting him to detail the transaction in his ordinary manner; and if it plainly appear that he cannot depose to any material fact in support of the complaint, the Magistrate will exercise his discretion in not examining him, as it is desirable to avoid administering an oath, unless its necessity be apparent. By such previous enquiry, also, the Magistrate may be made acquainted with local descriptions, and collateral circumstances, which may happen to be useful auxiliaries to the comprehension of the principal facts, and he will often be enabled by the manner of the parties, to discover whether they are speaking truth, or combining in the assertion of falsehood.

2. If in such case, it appear, that the party preferring the complaint can depose to any material fact, he should be sworn or affirmed. The witness should then be examined by the Justice, and his deposition carefully taken down in writing, as nearly as possible, in the words used by the witness; and it seems better, in general, to take it in the first person, "I saw, &c." instead of saying, "He, this examinant, saw, &c." The introduction of technical terms should be avoided, but all facts and circumstances ought to be introduced which are necessary to prove the offence, or which have a bearing upon the case, in order that the witness may be tied down to his narrative, and not left open to subsequent influence. Nothing, therefore, which is material, or that has any bearing on the case, and to which the witness can depose, ought to be omitted, or in any wise misrepresented in committing it to paper; so that, on the one hand, the prisoner may know what he shall have to answer at his trial, and be protected against the contradictory statements of the witnesses; and on the other, that there shall be no risk of the ends of justice being defeated, as has often happened by the witness at the trial stating facts which do not appear in his informations,

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*Suggestions, &c.* These suggestions were originally published and circulated in Ireland, and have been recently reprinted in Calcutta by Mr. Montgomery of the Bengal Civil Service for the use of Justices of the Peace residing in the Provinces; they appear so well adapted to that end, that I have followed his example with the same intention. Justices in the Provinces, generally, are however so seldom called on to exercise their functions, that I should perhaps have hesitated in making so lengthy an addition to this volume, had I not thought that much of the matter contained in the "Suggestions" would be useful, though not directly applicable, to the Provincial Magistracy—especially the younger and less experienced members of the Service. The same principles, modified by, and adapted to circumstances, may with obvious propriety and advantage, serve as a guide in the conduct of Magisterial investigations in general.

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or which appear irreconcilable with his written depositions. The Justice should also be careful to ascertain that the facts deposed to are within the knowledge of the witness, and are not given on his opinion, or from hearsay. After the examination of each witness is concluded, it should be distinctly read to him, in order that he may have an opportunity of correcting any thing that may be amiss in it. If he assents to its correctness, he should be called upon to sign it in attestation of its accuracy. These suggestions of course apply to proceedings *after* warrants have been granted and the prisoner has been arrested, as well as to proceedings prior to the granting of warrants, and therefore after a witness has been examined, where the prisoner has been arrested, he should then be called upon to cross-examine the witness, if he think proper, to the facts deposed to, and the answers of the witness to the cross-examination ought also to be taken down, and returned to the Court. It should be borne in mind that the Statute 9th Geo. IV. Cap. 74, Sects. 2 and 3, requires that all the material facts and circumstances shall be set forth, and this is requisite, as well, in order that the officer of the Court before which the trial is to be had, may thereby be able to frame a correct Bill of Indictment, as also that the Court may have the means of ascertaining by reference to the statement contained in the information, whether the testimony of the witness at the trial corresponds therewith, which is occasionally of the last importance in testing the credit of the witness.

3. When the person accused is brought before the Magistrates, the prosecutor or witness should, in all cases, attend and be sworn, to identify the prisoner. If the original information, taken at the time the complaint was made contains a full statement of the case, and the witnesses for the prosecution have nothing further to depose, except to identify the prisoner, it is not usual to require a second information to the same facts; but in such case the witnesses are re-sworn, in the presence of the prisoner, to the truth of their former depositions, and also to the identity of the prisoner, which latter statement, must be subjoined to the original information, and the information being then read distinctly to the witnesses, in the presence of the prisoner, the latter is permitted to cross-examine the witnesses respecting the matters therein charged against him. (See No. 2.) If he decline to do so, or if nothing additional is elicited, a fresh jurat is made to the original information, with the additional averment, above stated, as to the identity of the prisoner. But in this case, the witnesses should be thus re-sworn to their former informations, and not merely called upon to re-assert their truth.

4. When a fresh information is requisite, or additional matter is to be introduced into the original information, the suggestions above made (in Nos. 2 and 3) are applicable, observing to state, that it has been taken in the presence, and hearing of the prisoner.

5. The evidence of the accused having been read over to him, so as to make him fully acquainted with the charge, he should be asked, if he wishes to say any thing in answer to it; the Magistrate at the same time informing him that he is not bound to state any thing, or to make any disclosure which may criminate himself, but that whatever he may state will be taken down, and may afterwards be used in evidence against him, and that he is not to hope for favour, though he should confess the crime; but the Magistrate is not to dissuade him from confessing, as this would be to close up one of the sources of justice; care should be taken that neither promises

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nor threats are held out to induce the accused to make any admission against himself, and that any admission received is not the consequence of promises or threats. What the accused then states should be taken down in writing—the heading of the paper in which it appears having been previously prepared—and his statement should be taken at *the time* such statement is made by him, and as nearly as possible in *the very words used by him.* Attention to this latter caution cannot be too strongly enforced, and for this purpose, it is again suggested, as in the case of taking information (Supra No. 2) that the statement be taken down as it is usually made, in the first, not the third person. This statement should then be perused by the accused, or read over to him in such a deliberate manner that he may perfectly comprehend it; he should thereupon be asked if it be true, and what he has intended to state; and if he say that it is, he should be asked to sign it, and the signature of the Magistrate should be also affixed. But though the accused should refuse to sign it, if he admit its truth, it should be signed by the Magistrate, and returned with the information. It should always be borne in mind, that this examination of the accused is intended by the law, as a privilege in his favour, in order that if innocent he may at once free himself from suspicion, and regain his liberty.

6. If several prisoners are implicated in the same charge, it is advisable, especially in offences of a serious character, that their statements be taken separately, and not in the presence of each other.

7. If from the absence of witnesses, or from any other reasonable cause, it become necessary or expedient to defer the examination, or to continue it at a future day, the Magistrate has, for such purpose, a discretionary power to remand the accused for further examination, and bring him forward as often as he considers it necessary for the ends of justice; but in the exercise of this discretion, he ought to take care that the postponement be not for a longer time than is necessary for the due investigation of the case; that it be bonâ-fide for re-examination, and not for the purpose of extorting a confession or the like; and that the time for which the accused is remanded, is a reasonable time, not exceeding three or four days. Where a Magistrate has a discretionary power to take bail, and he has reason to believe that by adjourning the enquiry, the accused may be enabled to bring forward such evidence as will induce him to take bail, it will be proper to commit, not for trial, but for further examination only; or, if upon such charge, at any time previous to first committal for trial, he decide that bail ought to be taken, and if the accused has not his bail ready, he may by remanding him in like manner, give him a reasonable time to procure it. A commitment for further examination, if for more than a single day, should be by warrant in writing until a stated day, and the reason for postponement should appear in the body of the commitment.

8. The declaration of a person in extremity, or what is called his dying declaration, that is, a declaration by a person in a consciously dying state and under the impression of presently impending dissolution, stating the mortal injury inflicted upon him, made *in the absence of the prisoner*, is properly taken without oath. In such case, the Magistrate does not, in strictness, act in his Magisterial capacity, or with authority to administer an oath, as in the case of an information taken under the Statute. But it is desirable that a Magistrate should be called upon, in a matter of such solemn import, in preference to any person of less experience, and information. A dying declaration, however, when taken upon oath, extra-judicially administered,

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is not inadmissible in evidence, although it obtains no additional sanction thereby. If taken in the presence and hearing of the prisoner, it becomes an information, and is to be taken upon oath, subject to the observations suggested Supra No. 2; and in either case, should be taken in the words used by the person making it. If the accused be present, particular care should be had as to his *identification* by the dying man; and if he be not present, the most minute description of him should be obtained, by name, residence, &c. &c., so that there may be no doubt as to the person charged, or confusion between him and others of the same name or family.

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*Of the Form of the Information, and the Statements proper for particular cases.*

9. In every information it is absolutely necessary to state the proper and entire name, or names of the different persons swearing the informations, and also their true addition or employment (as soldier, shop-keeper, tailor, &c. &c.,) and the name of the district, station, or village, in which each of them lives. These particulars are requisite for the information of the officer of the Court, in preparing the indictment, and also in returning the estreats of recognizances forfeited, he being obliged to make oath, that all these circumstances are truly set forth to the best of his knowledge. The place where the offence was committed ought also to be particularly mentioned.

10. In all cases where a woman is either the prosecutor or the prisoner, be particular in stating whether she be married or single; and if married, the name, residence, and addition of her husband; and give the full name of each, without any abbreviations.

11. In cases of Larceny, describe accurately and distinctly what the stolen articles are, and never use general words, such as "wearing apparel, shop goods, implements," &c. &c., but state each article stolen, distinctly by name; ascertain clearly the owner of the property, and in case several articles have been stolen by the prisoner, belonging to different persons, state particularly the articles belonging to each. Be very particular in stating the date when, and the place where the property was found; and every circumstance which can assist in determining whether the Indictment should be for stealing, or for receiving the property knowing it to be stolen. The Magistrates should take care that the property can be accurately traced at the trial, through all the hands into which it may have passed, from the time of its being found, till its production in Court. It would greatly simplify a case if the property could be allowed to remain in the custody of the first finder, and in the event of his not being trustworthy, then in the hands of the first next who may be so, and who may produce it at the trial. Several transfers, from one Police Officer to another, weaken the chain of communication. The Magistrate must deal with the property as with a witness, and take such measures as are needful to secure its production, and identification, and all persons necessary for these purposes must be bound to prosecute.

12. In cases of cattle stealing, it is better to be particular in describing accurately the sex of the animal stolen; for instance, in the case of horses, whether the animal was an entire horse, a mare, a gelding, a colt or a filly. In the case of sheep, whether the animal was a ram, a ewe, a wether, or a lamb.

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13. In cases of stealing money, mention, as distinctly as possible, of what items the money stolen consisted. For instance when one hundred rupees has been stolen, say, 100 Rs., that is to say, four twenty rupee *notes* of the Bank of Madras (or whatever other bank may have issued them,) one gold mohur, and five rupees.

14. Mention whether the articles, or money, were stolen from the person of the Prosecutor, or not, and if from the person, whether at the time of, or immediately before, or immediately after the robbery, the accused did stab, cut or wound the Prosecutor, and also whether the accused was armed with any weapon, and what it was; whether one or more persons were concerned in the robbery; and whether, at the time of, or immediately before, or immediately after, the robbery, the accused or any person with him, beat, struck, or used any other personal violence to the Prosecutor. The same circumstances ought to be ascertained and stated, if the charge be of assault with intent to rob.

15. In informations against a receiver of stolen goods, if the person who stole them be known, mention his name.

16. In cases of obtaining money or goods under false pretences, describe the whole conversation and conduct of the prisoner, as accurately as possible; and in cases of cheating, be as minute as you can in stating the frauds practised. If the prisoner obtain money or goods under a false written order, be very particular in setting out the order verbatim; but in general, the best course to adopt is to affix the order to the information, after it has been *marked* for identification, by all the parties whose informations have referred to it, or at least by the Magistrate himself who shews it to them.

17. In cases of embezzlement of money or goods, or any valuable security, by clerks, servants or agents, state particularly what was embezzled, and all the circumstances under which it was done; by which of these three descriptions of persons it was done; and, if by an agent, whether he had received any instructions in *writing*, how to apply the money.

18. In all cases of breaking into a dwelling house, mention the hour* at which it was done, and the acts of the prisoner thereupon; and in cases of breaking and stealing therefrom, state whether the prisoner in so doing, had broken into, or out of the dwelling house, and at what hour. In cases of stealing from a dwelling house, in the day time, or without breaking into it, or out of it at night, state whether any person who was in the dwelling house at the time was put in fear, and the value of the things. In cases of breaking into an out-house, and stealing therefrom, state whether the out-house communicates with the dwelling house by an enclosed or covered passage, or whether it is a shop, warehouse, or godown, without any such communication.

19. In cases of the demand of property, arms, &c., with menaces, or by force, state the very words used by the accused in making the demand, and the terms by which he described the article demanded.

20. In cases of forged notes, mention the name of the Bank (and if a Branch Bank, of what Bank,) the date, the sum, the number, and the signature of the clerk. In these cases the note may be affixed to the informa-

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* So far as the same is essential to burglary, the night is to be considered, and is declared to commence at 9 o'clock in the evening of each day, and to conclude at 6 o'clock in the morning of the next day.

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tions, after it shall have been marked for identification by all the parties whose informations have referred to it, or at least by the Magistrate himself who shows it to them, as is suggested in the preceding number (16) with respect to written orders.

21. In cases of passing bad coin, collect and state all previous instances of the prisoners having passed bad coin, and the times when they did so; whether any of the prisoners had any bad coin in their possession when taken into custody, and how many pieces. Mention distinctly the different kinds of coin, as directed in the 12th suggestion, respecting larceny of coin. The coins should also be carefully marked for identification, by every person through whose hands they may have passed before the detection and arrest of the prisoner; and care should also be taken, that after having been so marked, they are sealed up by the Nazir, or other person to whose charge they may be confided, so as to be produced in that state at the trial. Sealing by the Nazir in the presence of the first finder, and re-opening before the Judge on the trial would obviate the necessity of marking the coin, and this course may therefore be adopted where it is feasable. It is also of great importance that the precise nature of the transaction in which the prisoner passed, or attempted to pass, the coin in question, should be particularly set out by the information, together with his conduct upon his examination before the Magistrate.

22. In all cases of violence to the person, such as murder, rape, stabbing, cutting, or wounding, or assault, be as minute as possible in describing the different acts done by each of the persons accused. In cases of assault, state whether the injury be such as to endanger life, or to inflict grievous bodily harm, or to disfigure; and in all, when committed with fire arms, or dangerous weapons, the instruments, if discovered, should be preserved, and marked for production and identification, at the trial. In case the Justice shall find the assault and battery complained of, was not accompanied by any attempt to commit felony; or shall be of opinion that it is not a fit subject for a prosecution by indictment, he may proceed in a summary manner to hear and determine the offence.

23. In cases of rescue, observe the same care in describing the articles rescued, and in stating whose property they are, together with the name of the place where the offence was committed, as directed in the 11th suggestion, with respect to goods stolen; and state also, whether the goods rescued were under seizure as a distress for rent, or in execution of a Civil Bill decree, or Sheriff's warrant.

*Note.*—The oath should be administered before a deposition is taken down, not, as is sometimes the case, after it is taken down and when it is about to be read to the witness. All erasures and interlineations should be avoided as much as possible, and, when made, a memorandum of the fact should be affixed by the Magistrate.

24. The Magistrate, having heard the examinations and ascertained that the accused is not entitled to be discharged, is next to determine, whether he will bail or commit him. If the offence be a misdemeanour, the accused may insist on his being admitted to bail, and then the only question is, as to the amount, and solvency of the sureties. When any person shall be charged with felony, or suspicion of felony, and the charge is supported by creditable evidence of the fact, the Justice may commit to prison. On the other hand, if the evidence given before him, shall not be such as

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to warrant a strong presumption of guilt, nor to warrant the dismissal of the charge, he may admit to bail. When the party accused is admitted to bail, be careful to set forth the particulars above stated (see No. 9) and also to state with particularity the offence for which the party so admitted to bail is committed. Magistrates have a discretionary authority as to the amount of bail. Such sum to be determined according to the affluence and rank of the prisoner, and the nature and enormity of the offence. In general two bails are required. Infants and married women, who cannot themselves be bound, ought to procure some person to be bound for them. In case of refusal they may be committed.

25. The warrant of committal should state the offence concisely, but with convenient certainty.

26. When the party accused is committed to custody, the case should be sent for the earliest trial, the prisoner being entitled, if innocent, to his liberty as soon as possible.

27. Magistrates ought to inform all persons bound to prosecute, or give evidence, that they must attend at the court early on the day on which the Grand Jury is to be sworn, to be examined; indeed they must attend every day, unless they can ascertain that the trial is fixed for any particular day, as otherwise their recognizances will be estreated.

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*Of suppressing Breaches of the Peace.*

28. The office of Justice of the Peace was instituted by an Act passed in the reign of Edward I. which directs that in every county, good and lawful men shall be assigned to keep the peace. This assignment is by the King's commission, and the duty of Justice of the Peace is, as that of Conservators of the Peace was, to use their own exertion, and to command the help of others, to arrest and pacify all persons who, in their presence, and within their jurisdiction and limits, by word or deed, shall go about to break the peace.* If a Justice finds persons riotously assembling, he alone has not only power to arrest the offenders, and bind them to their good behaviour; or imprison them if they do not offer good bail; but he may also authorize others to arrest them by a bare parole command *without warrant;* and by force thereof, the persons so commanded may pursue and arrest the offenders in his absence. It is a criminal offence, for which he is punishable on information, for a Justice to refuse to interfere for the preservation of the peace, and it is no excuse for him to say he was afraid —his fear must arise from actual danger, such as would affect a constant and firm man—he must do all that he knows to be in his power, and that can be expected from a man of ordinary prudence, firmness, and activity— he ought in the first instance to call on the Police; if they cannot be procured in sufficient force, private persons, or even the Military may be called in; but it does not form any part of the duty of the Justices to marshal, or array the Police, or Military, or to head them when actually engaged in quelling a riot; that belongs to the officers of these respective forces. No prudent military man would act without a Magistrate, or at least an order from him, which is all that is required.

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* These suggestions will be of use when Justices of the Peace are called upon to prevent duels.

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29. Any person who encourages, or promotes, or takes part in riots, whether by words, signs, or gestures, is himself to be considered as a rioter, and is liable to be arrested for a breach of the peace.

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*Of Sureties of the Peace, and of Good Behaviour.*

30. Justices, by virtue of their commission, which enables them "to cause to come before them those who have used threats to others, to find sufficient security for the peace and good behaviour, and if they refuse to find such security, then to lodge them in prison, until they find such security, &c." are empowered to require sureties of the peace and good behaviour, and also bind over to keep the peace for a specified time.

31. Recognizances entered into by any person before any tribunal or Justice of the Peace, conditional that such person shall keep the peace to Her Majesty's subjects, or to any particular person, shall, immediately after the same shall be so acknowledged, be returned to the Clerk of the Crown. In case any person who shall enter into such recognizance shall commit any breach of the peace, or in any manner violate the conditions of the recognizances, the Judges of the Supreme Court on due proof, that the person so bound has committed a breach of the peace, are to order that such recognizance shall be forfeited, to such amount as they shall think fit. To be levied by their warrant.

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## SCHEDULE OF FORMS.

No. 1. Deposition of a Christian Witness.
2. Deposition of a Native Witness.
3. Summons.
4. Warrant of Arrest.
5. Examination of a Prisoner.
6. Commitment for re-examination.
7. Commitment for Assault in default of fine.
8. Commitment for Trial in Madras.
9. Recognizance to prosecute at the Sessions.
10. Recognizance to give evidence at the Sessions.
11. Recognizance of accused, and his bail to Indictment.
12. Liberate.
13. Deposition for swearing the Peace.
14. Warrant for Apprehension in do.
15. Recognizance with Sureties to keep the Peace.
16. Personal Recognizance.
17. Sureties for Good Behaviour.
18. Form of Oath.

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No. 1.

*Deposition of a Christian Witness.*

The Information and Deposition of taken upon Oath before me one of Her Majesty's Justices of the Peace, in and for the District of in the Presidency of Madras, the day of 184 , who on Oath saith:—

Taken by me

Signature of Deponent.

*Justice of the Peace.*

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No. 2.

*Deposition of a Native Witness.*

The Information and Deposition of being (a Mahomedan or Hindoo, as the case may be,) taken upon solemn affirmation before me one of Her Majesty's Justices of the Peace, in and for the District of in the Presidency of Madras, the day of 184 , who on solemn affirmation saith:—

&c.

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No. 3.

*Summons.*

District of To wit Office of Justice of the Peace. } By Esq. Justice of the Peace for and for the Provinces subject to the Presidency of Madras.

You are hereby required personally to be and appear at on the day of 184 , at o'clock to answer a complaint preferred against you by for assaulting and beating him on the night of the instant.

No.

Given under my hand, this 184 . }

*Justice of the Peace.*

To

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No. 4.

*Warrant of Arrest.*

To Nazir of the Criminal Court of and Head Police Officer and to all other Constables, and other Peace Officers within the Provinces, Districts, and Countries subject to the Presidency of Madras.

These are in Her Majesty's name to command you to apprehend and take the body of having been charged before me (name of Justice in full) one of Her Majesty's Justices of the Peace, on the oath of with having feloniously and maliciously assaulted one

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with a bludgeon by inflicting three blows on the said whereby he lingered, languished, and soon after died, and bring him the said before me, or any other of Her Majesty's Justices of the Peace, at their Office in aforesaid, to answer the said charge, and to be further dealt with according to law.

Given under my hand and seal, this day of 184 . } *Justice of the Peace.*

No.

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No. 5.

*Examination of a Prisoner.*

The Examination of taken before me one of Her Majesty's Justices of the Peace in and for the district of in the Presidency of Madras, the day of 184 . The said examinant being charged on the oaths (or solemn affirmations, as the case may be) of and with having feloniously (or as the case may be) saith (whatever prisoner pleases, after being cautioned not to say any thing to criminate himself.)

Prisoner's signature.

Taken by me

*Justice of the Peace.*

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No. 6.

*Commitment for Re-examination.*

To the Jailer of the Criminal Jail of

Receive into your custody the body of herewith sent you; he the said being charged before me (name of Justice in full) one of Her Majesty's Justices of the Peace, on the oath (or solemn affirmation) of with having feloniously stolen, taken, and carried away articles of the value of (100) one hundred Rupees, of good and lawful money of Madras, the property of the said (or as the case may be) and him the said safely keep for further examination until the day of 184 .

Given under my hand and seal, this day of 184 . } *Justice of the Peace.*

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No. 7.

*Commitment for Assault in default of Fine.*

To , Jailer of the Criminal Jail of

Receive into your custody the body of herewith sent you, he the said having on the day of 184 , been convicted by me (name of Justice in full) Esquire, one of Her Majes-

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ty's Justices of the Peace, acting in and for the District of in the Madras Presidency, on the oaths of credible witnesses, for having on the day of in the year of our Lord 184 within the said Madras Presidency aforesaid, assaulted and beat one and having been ordered and adjudged by me to pay a fine of fifty Company's Rupees, and in default of paying the same to be committed to the Criminal Gaol of for the period of one month, unless such fine be sooner paid, which said fine, he the said not having paid, therefore him the said safely keep in the Criminal Gaol of aforesaid for a period of one month from this present day, unless he the said shall sooner pay and discharge the said fine; and in case he the said shall not have sooner paid, and discharged the said fine, you are hereby directed to bring him the said at the expiration of his said term of imprisonment before me, in order to his being discharged by due course of law.

Given under my hand and seal, }
this day of 184 . }

*Justice of the Peace.*

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No. 8.

*Commitment for Trial in Madras.*

To the Sheriff of the Town of Madras, and to the Keeper of Her Majesty's Prison at Madras.

Receive into your custody the body of herewith sent you, he the said being charged before me, (name of Justice in full) one of Her Majesty's Justices of the Peace, in and for the District of in the Presidency of Madras, on the oath (or solemn affirmation) of for that he the said did feloniously, &c. and him the said safely keep until he shall be discharged by due course of law.

Given under my hand and seal, }
this day of 184 . }

*Justice of the Peace.*

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No. 9.

*Recognizance to Prosecute at the Sessions.*

District of } Be it remembered, that on the day of in the year of the Reign of our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith and so forth: A. B. of in the Presidency of Madras aforesaid personally came before me (name of Justice in full) one of the Justices of our said Lady the Queen, assigned to keep the Peace, within the provinces subject to the Presidency of Madras, and acknowledged himself to be indebted to our said Lady the Queen, in the sum of one thousand Company's Rupees of good and lawful money of Madras aforesaid, to be made and levied of his goods, and chattels, lands and tenements, personally to the use of our said Lady the Queen, her heirs and successors, if the said shall fail in performing the condition under written.

The condition of this Recognizance is such, that if the above bounden shall personally be and appear, on the first

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and on the following days, at the next Sessions of Oyer and Terminer, and Gaol Delivery, to be holden in and for the Town of Madras, and shall then and there prefer a Bill of Indictment against for Larceny and shall then and there give evidence of all such matters and things as shall have come to his knowledge, and can be objected to the said on the said Bill of Indictment, and in case such Bill of Indictment shall be found, then if the saith shall prosecute the same with effect; and shall then and there attend from day to day, and shall not depart the Court without leave thereof, then this obligation is to be void, and of no effect, otherwise to be and remain in full force and virtue.

Taken and acknowledged the day and year first above written before me, } Signature of A. B.

*Justice of the Peace.*

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No. 10.

*Recognizance to give Evidence at the Sessions.*

District of } Be it remembered that on the day of in the year of the reign of our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth: A. B. of , C. D. of and E. F. of severally came before me (name of Justice in full) one of the Justices of our said Lady the Queen, assigned to keep the Peace within the provinces subject to the Presidency of Madras, and acknowledged themselves severally to be indebted to our said Lady the Queen, in the sum of Company's Rupees five hundred of good and lawful money of Madras aforesaid, to be made and levied of their goods and chattels, lands, and tenements, severally to the use of our said Lady the Queen, her heirs, and successors, if the said A. B., C. D. and E. F. shall fail in performing the condition under written.

The condition of this Recognizance is such, that if the above bounden A. B., C. D. and E. F., shall personally be and appear on the first and on the following days at the next Sessions of Oyer and Terminer, and Gaol Delivery, to be holden in and for the Town of Madras, and shall then and there severally attend from day to day to give evidence of all such matters and things as shall have come to their knowledge, and can be objected against G. H. on a Bill of Indictment to be preferred against G. H. upon the prosecution of I. K., and if the said A. B., C. D. and E. F. shall then and there attend from day to day, and not depart the Court without leave thereof, then this Recognizance to be void and of no effect, otherwise to be and remain in full force and virtue.

Taken and acknowledged the day and year first above written before me, }

Signature of A. B.
Ditto of C. D.
Ditto of E. F.

*Justice of the Peace.*

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## No. 11.

*Recognizance of Prisoner and Sureties to Indictment.*

District of } Be it remembered that on the day of in the year of the reign of our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth: (names in full) A. B., C. D. and E. F. securities, severally came before me (name of Justice in full) one of the Justices of our said Lady the Queen, assigned to keep the peace within the provinces subject to the Presidency of Madras, and acknowledged themselves to be indebted to our said Lady the Queen, in the sum of two thousand Company's Rupees, that is to say, the said A. B. in the sum of one thousand Company's Rupees, and the said C. D. and E. F. in the sum of five hundred Company's Rupees each, of good and lawful money of Madras aforesaid, to be respectively made and levied of their several goods, and chattels, lands, and tenements, to the use of our said Lady the Queen, her heirs and successors, if the said A. B. shall fail in performing the condition under written.

The condition of this Recognizance is such that if the above bounden A. B. shall personally be and appear on the first and on the following days, at the next Sessions of Oyer and Terminer, and Gaol Delivery, to be holden in and for the Town of Madras, and shall then and there attend from day to day, to answer to any Bill of Indictment that may be presented against him by (Prosecutor), and shall then and there abide, and undergo the order of the said Court, and shall not depart the Court, without leave thereof, then this Recognizance to be void, and of no effect, otherwise to be and remain in full force and virtue.

Taken and acknowledged the day and year first above written before me, } A. B.'s Signature.
C. D.'s do.
E. F.'s do.

*Justice of the Peace.*

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## No. 12.

*Discharge or Liberation.*

To the Jailer of the Criminal Jail of

Discharge out of your custody the body of A. B. committed by my warrant, dated the day of 184 .

Given under my hand and seal, this day of 184 . }

*Justice of the Peace.*

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## No. 13.

*Deposition for Swearing the Peace.*

The information and complaint of A. B. District of taken upon oath before me (name of Justice in full,) one of Her Majesty's

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Justices of the Peace for the the day of 184 , who says that one C. D., who saw the deponent in the street, threatened to take his life, and that from the above threats used by the said C. D. towards this complainant, this complainant is afraid that the said C. D. will do him some bodily injury, and therefore prays that the said C. D. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him the said complainant, and the said A. B. also says, that he does not make this complaint against, nor require sureties from the said C. D. from any malice or ill will, but merely for the preservation of his person from injury.

Sworn the day and year abovementioned before me, A. B.'s Signature.

*Justice of the Peace.*

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## No. 14.

*Warrant for Apprehension to Swear the Peace.*

To A. B., Nazir of the Criminal Court of and to all other Constables, and other Peace Officers within the Provinces subject to the Presidency of Madras.

These are in Her Majesty's name to command you to apprehend and take the body of C. D. having been charged before me (name of Justice in full) one of Her Majesty's Justices of the Peace, on the oath of E. F. with having used threats by which the said E. F. apprehends some bodily injury from him the said C. D., and therefore the said E. F. craves securities of the peace may be given by the said C. D. and bring him the said C. D. before me, or any other of Her Majesty's Justices of the Peace at to find such securities, and to be further dealt with according to law.

Given under my hand and seal, this day of 184 . *Justice of the Peace.*

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## No. 15.

*Recognizance with Sureties to keep the Peace.*

District of Be it remembered that on the day of in the year of the reign of our Sovereign Lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth: (names in full) A.B., C. D. and E. F. sureties, severally came before me (name of Justice in full) one of the Justices of our said Lady the Queen, assigned to keep the peace, within the provinces subject to the Presidency of Madras, and acknowledged themselves to be indebted to our said Lady the Queen, in the sum of two thousand Company's Rupees, that is to say, the said A. B. in the sum of one thousand Company's Rupees, and the said C. D. and E. F. in the sum of five hundred Company's Rupees each, of good and lawful money of Madras aforesaid, to be made and levied of their goods, and chattels, and lands and tenements, severally to the use of our said Lady the Queen, her heirs and successors, if the said A. B. shall fail in performing the condition under written.

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The condition of this Recognizance is such, that if the above bounden A. B. shall keep the peace, and be of good behaviour toward all Her Majesty's liege subjects, but more especially towards G. H., for the space of one year, then this obligation to be void, and of no effect, otherwise to be and remain in full force and virtue.

Taken and acknowledged the day and year first above written before me } *Justice of the Peace.*

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No. 16.

*Personal Recognizance.*

District of } Be it remembered, that on the day of in the year of the reign of our Sovereign Lady Victoria, by the grace of God, of Great Britain and Ireland, Queen, Defender ot the Faith, and so forth : A. B. came before me (name of Justice in full) one of the Justices of our said Lady the Queen, assigned to keep the peace within the provinces subject to the Presidency of Madras, and acknowledged himself to be personally indebted to our said Lady the Queen, in the sum of five hundred Company's Rupees of good and lawful money of Madras aforesaid, to be made and levied of his goods, and chattels, lands and tenements, personally to the use of our said Lady the Queen, her heirs and successors, if the said A. B. shall fail in performing the condition under written. The condition of the Recognizance is such, that if the above bounden A. B. shall keep the peace and be of good behaviour toward all her Majesty's liege subjects, but more especially towards C. D. for the space of one year, then this obligation to be void and of no effect, otherwise to be and remain in full force and virtue.

Taken and acknowledged the day and year first above written before me } A. B.'s Signature.

*Justice of the Peace.*

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No. 17.

*Commitment in Default of Sureties for Good Behaviour.*

To A. B., Nazir of the Criminal Court of

Receive into your custody the body of C. D., herewith sent you, he the said C. D., being charged before me (name of Justice in full) one of Her Majesty's Justices of the Peace, on the oath of E. F., with having used threats towards the said E. F., by which the said E. F. apprehends danger to his life, and him the said C. D., safely keep until he shall find securities for keeping the peace, towards the said E. F. or until the (period exceeding one year) next.

Given under my hand and seal, this day of 184 . } *Justice of the Peace.*

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No. 18.

*Oath.*

The evidence you shall give in this case shall be the truth, the whole truth, and nothing but the truth, so help you God.

*Extract from the Resolution of Supreme Government, dated 24th December* 1847, *and published in the Fort St. George Gazette of 4th February* 1848, *page* 119.

Under the provisions of 157*th Article of Act* XIX *of* 1847, all Descendants of Europeans professing the Christian Religion, whether born in Wedlock or Illegitimate, are equally entitled to claim trial as Europeans.

Individuals professing the Christian Religion whose parents are both Indo-British, and also those born of parents the one Indo-British, and the other Native, are amenable to the Mutiny Act of Articles of War for the Company's European Troops as persons of European Descent.

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Note.—In the original " 153rd Article of Act XX of 1845" which has since been repealed and this enactment substituted.

(*To face page* 187.)

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# MILITARY LAW,

## ACT No. XIX. of 1847, &c.

Article 157. All Officers and Soldiers, all Drivers, Farriers, Trumpeters, and Drummers, all unattested Recruits; all Hospital Attendants, Sub-Assistant Surgeons, Native Doctors, and Dressers; all Artificers and Labourers, Suttlers, Followers, public and private, or others attached to or serving with any part of the Army, are to be governed by these Articles and subject to trial by Courts Martial.

Provided that persons of European descent, (whether on the side of their father or mother) professing the Christian Religion, shall not be amenable to these Articles; but if belonging to the descriptions mentioned in this Article, (and not being Her Majesty's natural born subjects born in Europe, or the children of such subjects,) shall be tried and punished in the same manner as persons are who are subject to the Mutiny Act and Articles of War in force for the better government of the European Officers and Soldiers in the service of the East India Company.

Article 65. Any person not amenable to these Articles of War, who, having been summoned before any Court Martial, shall refuse or neglect to attend; or who attending, shall refuse to be sworn, or to make affirmation, or to answer any lawful question;

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Act XIX, 1847. This Act contains the "Articles of War" for the Native Army. Such portions only are here given as mutually concern the Civil and Military Powers: the same course has been followed in respect of the Military Police, Regulation VII of 1832, p. 191.

Article 65. *Shall be delivered, &c.*—The Magistrate is authorized by Sec. II, Reg. I of 1824—*which see at p.* 20—to punish parties so contumaciously behaving, as provided in Sec. VII, Reg. III of 1802—*i. e.* by fine not exceeding five hundred Rupees and committal to close custody while they remain contumacious. In a case of Perjury or subornation of Perjury, the Magistrate would have to send the parties to the Criminal Court to be proceeded with in the usual way: or with reference to Sec. XII, Reg. VII of 1832—*which see at p.* 192—it may perhaps be held that the word "Magistrate" must here be taken to mean "Criminal Judge," and that the parties should be dealt with as therein provided.

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or shall give such testimony as, if given in a Criminal Court, would render him guilty of perjury; or who shall induce any other person so to offend;

Shall be delivered to a Magistrate to be proceeded against according to law.

ARTICLE 66. Any person using menacing or disrespectful words, signs, or gestures, in the presence of a Court Martial then sitting, or causing any disorder or riot so as to disturb their proceedings, shall be punished according to the condition of the offender, and the nature and degree of his offence, by the sentence of the same or another Court Martial, if he be amenable to these Articles of War; provided that such offender shall not be liable to be sentenced to corporal punishment or to imprisonment with hard labour; and if not amenable to these Articles of War, the offender shall be delivered over to a Magistrate to be proceeded against according to law.

ARTICLE 84. Whenever the sentence of a General Court Martial shall adjudge Transportation, or Sentence of Death shall be commuted by competent authority to Transportation, any of the Sudder Courts shall give effect to such Sentence, or commuted Sentence, on the same being certified to the Court under the authority of the Commander-in-Chief.

And whenever any Sentence of a Court Martial shall adjudge Imprisonment with labour, or with Solitary Confinement, or both, or whenever the Sentence of a Court Martial shall be commuted to any such Imprisonment, it shall be the duty of every Judge, Magistrate, Sheriff, or other Officer in charge of a Jail, to give effect to such Sentence, on the offender being delivered into his custody, and on being furnished with a copy of the Sentence by the Officer Commanding the Station, or Regiment, or Detachment, within which the trial is held.

Whenever a Commanding Officer shall send a Convict to any *Officer in charge of a Jail* under the *provisions of Article* 84, *Act XIX*, 1847, he shall deliver to the person who is sent in charge of the Convict, a copy of the confirmed sentence of the Court Martial, duly certified by the proper Officer; and also a paper, in duplicate, in the following form:

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Article 66. *Shall be delivered, &c.*—In such case the Magistrate must be guided by the nature and degree of the offence, and proceed accordingly.

Sec. III, Reg. I, 1828. This, and the following Sections of the same Regulation, were originally enacted to provide for the reception and custody of Convicts sentenced under Article 6, Sec. XII, Reg. V of 1827, by Courts Martial held without the Company's Territories—they are still virtually and clearly applicable, as a rule of procedure, in similar cases; as well as in all cases embraced by Article 84 of Act XIX of 1847, which has in effect been substituted for that enactment.

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*Descriptive Roll of a Convict sent to* *under Article* 84, *Act XIX*, 1847.

| Name and designation or rank of the Convict. | Name of his native place and of the Zillah in which it is situated. | Of what offence convicted. | To what punishment sentenced. | Whether any and what part of the sentence executed. | Date on which the Convict set out. |
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A. B.

*Officer Commanding.*

—*Sec.* III, *Reg.* I, 1828.

The person in charge of the Convict shall, on his arrival at the Jail, deliver him over to the Officer in charge thereof, together with the copy of the confirmed sentence and the Descriptive Rolls. The said Officer shall receive them, and shall immediately take charge of the Prisoner, and cause him to be examined by the Medical Officer of the Station, if there is one, or by the Native Doctor in charge of the Jail, who shall certify in writing in what state the Prisoner has arrived, and whether he appears to have had due care taken of him on the route.—*Sec.* IV, *Reg.* I, 1828.

The Officer in charge of the Jail shall deposit the copy of the confirmed sentence with the records of his Office, and return the duplicate Descriptive Roll to the person who delivered it; having first endorsed on it, under his official signature, the date on which the prisoner was received by him, and the substance of the Certificate of the Medical Officer or Native Doctor provided for in the preceding Section.—The original Descriptive Roll, endorsed in the like manner, shall be deposited with the records of the Office.—*Sec.* V, *Reg.* I, 1828.

The Officer in charge of the Jail shall proceed to cause the confirmed sentence of the Court Martial, or the part of it remaining unexecuted, to be executed according to Law in the usual manner; and the provisions of the general Regulations regarding Prisoners shall be applicable to persons confined under this Section. —*Sec.* VI, *Reg.* I, 1828.

In the case of any Native Officer or Soldier confined under the preceding Section, if it shall not appear from the copy of the confirmed Sentence that he has been discharged from the service, the Officer in charge of the Jail shall give notice to the Adjutant General of the Army of the date on which the sentence will expire, forty days at least before that date, in order that a proper guard may be sent to take charge of the Convict on his release, and reconduct him to his Corps; and the Convict shall on his release be delivered to the guard so sent; and the Officer in charge of the Jail shall give him a Certificate of his behaviour while in Jail.—*Sec.* VII, *Reg.* I, 1828.

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Article 114. In all places within the jurisdiction of any Civil Judicature, established by appointment of Her Majesty, or of the said Company, Officers and Soldiers accused of Capital crimes, or of violence, or of offences against person and property, punishable by such Civil Judicature, shall be delivered over to a Magistrate to be proceeded against according to law.

And all Officers and Soldiers are hereby required to assist the Officers of Justice in apprehending and securing any person so accused.

Article 155. A person who may have been tried for any offence by a Court Martial under the authority of these Articles of War, shall not be tried for the same in any other Court whatsoever; and no person who shall have been acquitted or convicted of any offence, by a Court of Civil Judicature, shall be punished by a Court Martial for the same, otherwise than by Cashiering or Dismissal from the Service.

Article 156. The Regulations at present in force at any Presidency, by which the office and powers of Commissariat Officers, or Officers in charge of the Police, or Superintendents of Bazars, are defined and controuled; or by which Punchayets are constituted and guided; or by which jurisdiction is given to Courts Martial over offences committed by persons amenable to the Articles of War, within certain limits beyond or around Cantonments; are hereby declared to be in full force, and the same shall continue to be observed at the several Presidencies respectively.

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Art. 156. *Regulations at present in force.*—These are contained in Reg. VII of 1832, such portions of which as mutually concern the Military and Civil authorities will be found in the following pages under the head of "Military Police."

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# MILITARY POLICE,

## REG. VII. of 1832.

III. *At Military Bazar Stations, Police authority vested in Commanding Officer, within Military limits, plans whereof shall be deposited with the Magistrate of the District.*

IV. *Senior Commissariat Officer, or such other Officer as Government may appoint, to have immediate charge of the Police within such limits.*

VI. *Such Officer may apprehend by warrant parties within his jurisdiction, charged before him with heinous offences: or they may be arrested on hue and cry without warrant. Vagrants, or persons of suspicious or notoriously bad characters may also be apprehended on warrant.*

VII. Persons apprehended under Section VI shall, within twelve hours after their apprehension, be delivered over by the Commanding Officer, as provided in Section XXXIV, to the Magistrate, Joint Magistrate, or Assistant Magistrate; or in their absence, to the nearest Native Officer of Police under them, unless the prisoner is charged with one of those particular offences which have been, or may be, by law, made punishable by Courts Mar-

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Reg. VII, 1832. *See Notes on Act* XIX *of* 1847, *and Art.* 156 *of* XIX 1847, *at p.* 187 and 190.

Sec. IV.—The Judges are of opinion, that Junior Commissariat Officers are not competent to perform the duties vested by this Section in the Senior Commissariat Officer of the Station, or such other Officer as may be especially appointed by Government.

* * * * * * *

Referring to the concluding para of the Orders of Government, dated the 6th January 1835, the Judges conclude that the ——— is mistaken in supposing it to be the intention of Government, that *all* Commissariat Officers should qualify as Justices of the Peace,—and that it is intended only, that all the Commissariat Officers competent to the discharge of Police duties (namely *Senior* Commissariat Officers at Stations), should so qualify.—*F. U.* 19*th Feb.* 1835, *V. M. p.* 21.

Such Officer is the authority at those Stations, under whose orders, Inquests, whether upon the bodies of Europeans, or Natives, are to be held.—*F. U.* 6*th June* 1835, *V. M. p.* 68.

Sec. VII. *See* in reference to this subject C. O. 9th August 1836, under Article 65, Act XIX of 1847.

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tial, or by the Officer in immediate charge of the Police under this Regulation; and is a person by law declared amenable to these tribunals.

VIII. *First.—May summon as witnesses persons residing within Military limits.*

*Second.*—When Officers in charge of the Police under this Regulation shall require the attendance of witnesses residing without Military limits, the summons shall be sent to the principal Native Officer of the Village in which the witness resides, to be served by him, unless there be a European Civil Officer in the Magistracy on the spot, in which case it shall be sent to him to be served; if the witness resides more than four miles beyond such limits, the Officer Commanding shall send the summons to the nearest European Civil Officer in the Magistracy, with a letter in the form contained in the appendix C to this Regulation. The Civil Magisterial Officer shall immediately countersign the summons, and cause it to be served, endorsed, and returned accordingly.

IX. The provisions contained in the preceding Section shall apply to all witnesses summoned by Courts Martial.

XII. Whatever person, having made oath or solemn affirmation before an Officer in charge of the Police under this Regulation, shall wilfully and deliberately depose falsely, touching any point material to the issue of the cause pending; such person, if subject to the Rules and Articles of War for the government of the Native Army under this Presidency, shall be dealt with according to those Rules and Articles; and if not subject to the same, shall be sent by the Commanding Officer, as provided in Section XXXIV, to the nearest Criminal Judge, together with the original deposition on which the perjury is assigned, duly signed and certified, and the witnesses who can prove the fact which falsifies the deposition, and also the witnesses who can prove the wilful and deliberate giving of the deposition. The Criminal Judge shall dispose of the case under Section IX, Regulation X of

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Sec. VIII. *Letter in Form C.*—I have the honor to transmit to you the enclosed summons, which I request that you will countersign, and cause to be duly served and returned to me, endorsed by the party summoned with his acknowledgment.—I am, &c.

Sec. XI. In the original this applied also to witnesses summoned by a Court Martial, but by Article 64, Act XIX of 1847, a different procedure is prescribed in such cases. In respect to the offence when committed towards the Officer in charge of the Police under this regulation, the law remains in force under Article 156, Act XIX of 1847.

Sec. XII. *Shall be dealt with according to these rules.*—The offence of Perjury or subornation of Perjury may be tried by Court Martial under Article 67, Act XIX of 1847, and the accused, if convicted, "shall be dismissed the service, and shall be further subject to fine to the amount of his arrears of Pay and allowances, or to imprisonment which may extend to three years;"—according to the sentence of a General, or District, or Garrison Court Martial.

*To the nearest Criminal Judge.*—See Article 65, Act. XIX of 1847, and Note thereon, at p. 187.

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1816: on conviction before the Session Court such person shall be liable to the punishment provided for perjury by Clause first, Section III, Regulation VI, 1811.

XIII—XIV. *Authorize punishment of certain petty offences committed by military persons, &c. therein mentioned, by Court Martial, and in some instances by officer in charge of Police to the extent specified in Sec.* XV.

XV. *First.*—The persons specified in Sections XIII and XIV, if convicted of simple theft not exceeding twenty Rupees, unattended by circumstances of violence or outrage, or of receiving stolen property not exceeding twenty Rupees in value, knowing it at the time to have been stolen; and Servants of Military Officers, if convicted of embezzlement or wilful misapplication of money entrusted to them by their Masters, not exceeding twenty Rupees, shall be sentenced to imprisonment with hard labour not exceeding one month, or to lashes not exceeding fifty with a cat-of-nine tails, or to both in aggravated cases. If convicted of any other of the offences therein enumerated, such persons shall be sentenced to imprisonment not exceeding one month; provided always, that persons above the condition of petty dealers, menial servants, or workmen, if found guilty of a breach of local or bazar Regulations established by the Commanding Officer under the orders of the Government, shall be sentenced only to pay a fine, in no case exceeding one hundred Madras Rupees; and if the fine be not paid forthwith, to imprisonment not exceeding one month in lieu of it.

*Second.*—Within the territories subject to this Government, if any person specified in Sections XIII or XIV, accused of the offences therein enumerated shall appear, upon due investigation *previous* to trial, deserving of severer punishment than is authorized in the preceding Clause, he shall be sent to the nearest Criminal Judge, together with the prosecutor and witnesses, in the manner directed by Section XXXIV.

XVI. *First.—Provides for the trial of Natives smuggling or attempting to smuggle liquor or intoxicating drugs; illegally selling them to, or for, Europeans; or illegally having in possession more than a certain quantity of the same within Military limits.*

*Second.*—Natives convicted under the preceding Clause, shall be sentenced to be imprisoned with hard labor not exceeding one month, or to lashes not exceeding fifty; and for aggravated offences, to both; provided always, that persons convicted of having

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Sec. XVI. The term "Native" does not here include Native Soldiery.—*F. U.* 17*th June* 1837, *C. R. p.* 328.

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liquor or drugs in their possession as aforesaid, shall not be sentenced to corporal punishment for the first offence.

XIX. Whenever it may be necessary, within the territories subject to this Government, to carry into effect a sentence of imprisonment and hard labour, under this Regulation, the Commanding Officer shall forward the person sentenced to the nearest Criminal Court, with an authenticated copy of the sentence, in the mode prescribed by Section XXXIV of this Regulation: the Criminal Court shall receive such persons and imprison and work them in conformity with their sentence. Beyond the frontier such sentences shall be carried into effect as the Officer Commanding may direct.

XX. Nothing contained in this Regulation is intended to prevent the Civil authorities from taking cognizance of charges against Military persons, for offences committed either in or out of the Military limits, which by law may be cognizable by the Civil tribunals *only* ; or to render amenable to Courts Martial, or to punishment by the Officer in charge of the Military police, accused persons arrested within the Military limits, though in the habit of resorting to the Military Bazar, who are not included in any of the Military classes specified in Section XIII; unless they be Natives infringing the provisions of Section XVI of this Regulation. All other accused persons must invariably be made over to the Civil Magistracy; or in their absence, to the nearest Native Police Officer under them, as directed in Section VII; and it is hereby declared, under clauses CV and CVII of the Act of Parliament of the 53d Geo. III, Cap. 155, published in Regulation II, 1820, that all British subjects of His Majesty, as well the Servants of the East India Company, as others, are liable to prosecution before the Magistrate or Criminal Judge of the Zillah, and to be fined to the extent of five hundred Rupees; and that all such British subjects are *also* liable to be sued before the Civil courts of the district in which they reside, for damages to an unlimited amount, on account of inflicting upon any Native of India punishment unauthorized by law, or illegally subjecting to trial by Court Martial, or to punishment by the Officer in immediate charge of the Police under this Regulation, persons not by law expressly made subject thereto.

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Sec. XIX. Officer Commanding cannot be permitted to carry such sentences into execution, within the frontier, on the spot. Convicts must be transmitted to Criminal Judge as herein provided.—*F. U. 7th Nov.* 1835, *V. M. p.* 318.

Sec. XX. *Sec.* CVII, 53 *Geo.* III, *Cap.* 155.—This enactment was repealed, as superfluous, by Act XI of 1836, which rendered all British subjects amenable to the Civil Courts—"the words after Rupees" are still useful however, as indicating the liabilities which may be incurred under the said Act XI of 1836.

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XXXIV. *First.*—Whenever, under the provisions of this Regulation, it shall be necessary to forward any person to a Criminal or Civil Court, to a European Civil Officer of the Magistracy, or to a Native Officer of Police under them, the Commanding Officer shall send him, under proper custody, accompanied with a paper in the English language to the European Officers, and a paper in the Native language to the Native Officers, in duplicate, according to the Form *J.* in the Appendix to this Regulation.

*Second.*—The Civil Officer to whom the said paper is addressed, shall certify on the back of one of the papers, whether the persons and documents specified in it have been duly received; and the copy so endorsed shall be returned to the person who delivered it; the other paper shall remain with the Civil Officer.

*Third.*—The Civil Officers shall receive all persons thus sent to them; and shall proceed concerning them according to the general Regulations.

XXXVIII. It shall be competent to the Governor in Council, at any time, by an Order in Council, communicated to the Civil authorities and published in General Orders to the Army, to declare all or any part of this Regulation, which may now specially apply to Commanding Officers at Military Bazar Stations only, to be applicable to Commanding Officers at any other Military Station, besides Military Bazar Stations. The limits of such jurisdiction shall, however, previously be defined by the Government, and plans thereof shall be deposited with the Magistrate of the district; and where there may be no Commissariat Officer on the spot, a Military Officer shall be appointed by the Government to take immediate charge of the police, under this Regulation, subject to the orders of the Officer Commanding the Station, and to exercise all or such part of the powers vested by this Regulation in the Officer in immediate charge of the police, as the Government, in each case may specifically delegate to him.

XXXIX. *First.*—Whenever it may be necessary to execute, within the limits of a Military Station at which one corps or more

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Sec. XXXIV. This applies to Prisoners forwarded under this regulation for disposal and trial. Convicts sent under sentence of Court Martial as prescribed by Article 84, Act XIX of 1847, must be forwarded as directed in Section III, Reg. I of 1828, which see at p. 189.

"FORM J."

*To the* ——————— *of the Zillah of* ———————

| Name, caste, and trade or profession of the person sent. | Name of his native place, & of the Zillah in which it is situated. | Cause for which he is sent. | Hour & date on which he set out. | Names of prosecutors or witnesses accompanying. | List of documents accompanying. |
|---|---|---|---|---|---|

# CIRCULAR ORDERS

OF THE

# FOUJDAREE UDALUT.

# CIRCULAR ORDERS

OF THE

# FOUJDAREE UDALUT.

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# CIRCULAR ORDERS

OF THE

## FOUJDAREE UDALUT,

FROM

1805 TO FEBRUARY 1848.

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This it is hoped will afford additional facility for systematic study, while the advantage, in the way of *reference*, arising from the Orders being placed according to their dates of issue, will be derived from the following List; in which every Order issued, is inserted according to its date, and either marked as cancelled or

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obsolete, and therefore omitted, or having opposite to it the page in which it will be found.

The cancelled and obsolete Orders are marked with an asterisk in the page column—the description includes all those specifically or virtually cancelled, or which have become obsolete under changes of the system since their issue. Orders cancelling others, have been themselves omitted, as obsolete: having effected their object in removing the cancelled Orders, it seemed superfluous to retain them. As little alteration has been made in the wording of the Orders, as was consistent with the design of adapting them to the new Criminal system, and this especially in the injunctive parts—in what may be termed the prefatory or explanatory portions, greater liberty has been taken. In cases for example, where an Order has been suggested by the experience, or called for by the error, of an individual, it has not been thought necessary to perpetuate the history of its origin; and in others, where the novelty of an instruction has induced the Superior Court at the time, to explain the motives which governed it, the reasoning has been omitted as uselessly swelling the bulk of the Orders, now that time and established usage, have confirmed the practice, and the executive Judicial Officers have only concern with the *Order*.

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| | 8 May | 9 |
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| | 12 July | 20 |
| | 31 „ A | 72 |
| | 31 „ B | * |
| | 7 August | 44 |
| | 10 „ | 26 |
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| 1834 | 6 January | 52 |
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| | 12 February | 21 |
| | 19 " | 39 |
| | 21 " | 71 |
| | 10 March | 43 |
| | 14 " | 12 |
| | 20 " A | 41 |
| | 20 " B | 48 |
| | 31 " | * |
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| | 24 October | 68 |
| | 26 November | * |
| 1839 | 8 January | 69 |
| | 12 February | 24 |
| | 14 " | * |
| | 23 " | 22 |
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| | 25 May | * |
| | 27 " | 24 |
| | 8 June | 10 |
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| | 29 October | 39 |
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| | 13 May | 47 |
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| 1841 | 26 " | 69 |
| | 27 August | 64 |
| | 28 August | 20 |
| | 9 October | 25 |
| | 6 December | 12 |
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| | 1 September | 25 |
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| | 23 November | * |
| 1844 | 3 January | * |
| | 10 April | 19, 47, 54 |
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| | 2 June | 79 |
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# REGULATION VII, 1802.

*Sec.* XV, *Cl.* 1.—Whenever the testimony of a medical man is required on the trial of a prisoner, it shall only be received when given orally, on oath, before the Court, in the presence of the prisoner.—*C. O.* 14*th April*, 1828.

Upon the question whether, in Criminal cases, where the prosecution is by a third party, against a husband or wife, either of them is a competent witness against the other, the Court observes, that it does not appear that the question before them can be decided according to the technicalities of either the Mahomedan, or English Law. The various socialities existing in every country, may require a modification of the general principle which discredits the testimony of such as are directly interested in the issue; but the interest between husband and wife amongst Natives of India, is very different from that existing in European countries, or even in those where the Mahomedan faith is very prevalent, especially where, as in Malabar, there exists a plurality of "husbands among some classes, and of wives among others." The Court are inclined to think, that in the existing state of society in India, the safest general rule will be, not altogether to exclude the testimony of either, whether for or against the other, but to let the objection go to the credit, rather than to the competency of such evidence. Where other sufficient evidence exists, it would be, obviously, very objectionable to make use of the testimony of parties thus situated.—*C. O.* 4*th March*, 1830.

The deposition of a witness given in the presence of a prisoner who has been brought before a Criminal Judge on any charge, may be taken in evidence upon the trial before the Session Court, if it be proved to the satisfaction of that Court that the informant is dead, or prevented by sickness from attending, or that he is kept away by the means and contrivance of the prisoner; provided also, that the deposition offered in evidence is proved to be the same, as was sworn before the Criminal Judge, without any alteration.—*C. O.* 8*th May*, 1833.

The above order of the 8th May, 1833, is confined exclusively to three cases; viz. where the deponent before the Criminal Court, is dead, where he is prevented from appearing by severe illness, and where he is kept away through the contrivance of the prisoners. In all other cases, the evidence to be available against the prisoner, must be delivered in open Court in person.

The above order applies alike to prosecutors and witnesses in a criminal charge.—*C. O.* 4*th July*, 1834.

Section VIII, Regulation I of 1825, enjoins reference of trial to Foujdaree Udalut, whenever conviction of prisoner may depend "exclusively or principally" upon evidence objected to by the Mahomedan Law Officer.

This rule is, with regard to certain "personal" objections to deponents, modified by the provisions of Clause first, Section II, Regulation VI of 1829; but it still holds good, in regard to the other grounds of exception to evidence, referred to in Section VIII, Regulation I of 1825, among which are obviously, exceptions taken to the description of evidence, directed by the Circular Order of 8th May, 1833, to be admitted.

The Court of Foujdaree Udalut deem it on this occasion necessary to call the particular attention of the Session Courts to that part of the Circular Order last mentioned, which indicates as a condition of the admissibility of the depositions in question—that it must "be proved on oath to the satisfaction of the Court, that the informant is dead, or prevented by sickness from attending, or that he is kept away by the means and contrivance of the prisoner." And the Session Courts are hereby enjoined to use especial caution in admitting alleged "sickness" as an excuse for the absence of a witness in these cases.—*C. O.* 4*th April*, 1835.

Whenever a prisoner in a referred trial may be concerned in other cases, whether under reference to the Foujdaree Udalut, or disposed of by the Session Court, the Judge presi-

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ding shall invariably report the circumstance in his letter accompanying the trial, and in the cases disposed of by himself, state the crime of which the prisoner stands convicted, and the conditional sentence passed.—*C. O. 6th April*, 1835.

The Court of Foujdaree Udalut direct that whenever a person of tender age may be brought before a Session Court as a witness, the Judge presiding at the trial do satisfy himself, by personal examination, whether or not the party be sensible of the nature and obligation of an Oath, and of the consequences of perjury, by the result of which examination he will be guided in the admission or rejection of the evidence of the witness.—*C. O. 15th April*, 1819.

Should it appear from such examination, that the child is not sensible of the nature of an Oath, but that this ignorance is attributable to defect of education, and not of capacity, it will be the duty of the Judge to postpone the examination of the case for a short interval, and direct the parents, or some other competent person, to instruct the child in the nature and obligation of an Oath, and of the consequences of Perjury;—and if upon an examination subsequent to such instruction, it shall be manifest that the child does then understand the nature of an Oath; the Oath should be administered and the evidence recorded accordingly.—*C. O. 12th July*, 1825, *B.*

The deaths of prisoners whose trials are under reference to Madras, should be instantly communicated to the Foujdaree Udalut by the Session Judges.—*C. O. 8th June*, 1829.

It is the witness's signature or mark which he is required to identify, it is not for the purpose of proving that such material facts were admitted by the accused, that the attendance of the attesting witnesses is required at the trial, but in order to prove that the confession was taken in the manner prescribed by the regulations, that it was fairly and voluntarily delivered, and that it was read over to, and signed, or marked by the declarant in presence of the said witnesses.—*C. O. 27th April*, 1837.

The attesting witnesses to a confession should be first examined as to the contents of the declarations attested by them, so far as to be asked the general purport of such declarations—the object of such examination being not to prove that particular facts were admitted by the accused, but that the witness was present at the confession, regarding which point there would be reasonable cause for doubt if he should be unable to state, generally, the purport of such confession.—*C. O. 8th June*, 1839.

After such preliminary examination, the declaration shall be read in open Court, and the subscription of the witnesses proved, and entry be made in the record, that this course of procedure has been observed.—*C. O 20th April*, 1835.

The holding of more than one trial at a time is expressly prohibited.—*C. O. 21st January*, 1833, *A.*

Although the prisoner confess, the evidence to the facts of the case must be taken notwithstanding. The Courts are to take from the prisoner a plain answer "guilty" or "not guilty," and then proceed to the examination of the witnesses in support of the charge against him: no distinction being made, in respect to taking the evidence for the prosecution, whether the prisoner plead guilty or not guilty.—*C. O. 20th Nov.* 1832.

The Law Officers of the Session Courts shall be careful in the Futwahs delivered by them, to specify the particular facts which they consider to be established against any prisoner or prisoners declared liable to punishment.—*C. O. 7th July*, 1815.

In referred cases the prisoner or prisoners should be duly apprised of such reference; and the Session Judges are accordingly directed to certify that such communication has been made. A Warrant in the subjoined form, with such alterations as may be necessary to make it applicable to the several cases, shall be issued in every such trial to the officer in charge of the Jail, and copy thereof annexed to the Record referred. No. —— of ——

Whereas the Prisoners *A.* and *B.* charged with ——— have been tried by the Session Court and convicted thereof, and the case has been referred for the final sentence of the Court of Foujdaree Udalut, you will therefore detain the said —— and —— in confinement in irons, and cause them daily (Sundays excepted) to be kept to hard labour on the public works until you shall receive the final orders of that Court regarding them.—*C. O. 8th May*, 1815, *B.*

In the preparation of the Record for reference, the Session Judge shall be careful to insert the proceedings of the Subordinate Authorities in their natural order, viz. 1st, those of the Police or Magistracy, and 2dly, those of the Criminal Judge recorded in the Order prescribed by Sec. XX, Reg. X of 1816.—*C. O. 9th Dec.* 1819. *A.*

In all referrible cases, the Foujdaree Udalut deem it of great importance that they should receive—as in certain special cases is prescribed by Clause 3, Sec. VI, Reg. XV of 1803—

the distinct sentiments of the Session Judges as to the guilt and punishment of each prisoner, together with a statement at large of the grounds of their judgment, whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case.—*C. O. 4th March*, 1822.

In respect to the defence of prisoners who may be brought before the Criminal Courts, the Magistrates, and the officers subordinate to them, the Court direct, that a prisoner's defence be not recorded till after the evidence for the prosecution has been gone through; when the presiding Officer will be careful to ascertain all that a prisoner may have to offer in his justification, or in extenuation of the charge.—*C. O. 1st August*, 1835.

Copies of the Futwahs of the Law Officers of the Session Courts shall be transmitted to the Criminal Judges: and the final sentences of the Session Courts be prepared in the form observed by the Foujdaree Udalut.—*C. O. 15th June*, 1826.

The Magistrate of the district and the Committing Officer shall be furnished by the Session Judge with official information of the grounds on which sentences of acquittal may have been passed in trials held by that Court.

In the case of the Criminal Judges the information is to be appended to the copies of the Futwahs of the Law Officers of the Session Courts furnished to the lower Courts under the Circular Order of the 15th June, 1826; and in the case of the Magistrates such information is to be communicated by the Criminal Court, by means of a memorandum to be prepared in the form subjoined.

| No. of the case. | Names of the Prisoners. | Crime charged against the Prisoners. | The grounds on which the Prisoners were acquitted of the crime charged against them. |
|---|---|---|---|

*C. O. 12th May*, 1837.

To render available as evidence declarations alleged to have been given by persons mortally wounded, when in a state which must induce apprehension of approaching death, evidence must be taken on the trial in proof of their execution.—*C. O. 5th March*, 1832.

It being necessary in order to the admission of a dying declaration in evidence, that it should be satisfactorily proved, that the deceased at the time of making the declaration was conscious of his danger, and had given up all hope of recovery—the Court of Foujdaree Udalut direct the attention of the several Session and Criminal Judges to the importance of duly investigating this fact, whenever such declaration may be evidence in a case of homicide.—*C. O. 26th Nov.* 1832.

*Sec.* XVI.—With regard to the appearance of females in Courts of Justice, the Governor in Council does not look upon it as a point to be determined by the texts of law writers, but by the judgment and feelings of society, as evinced in the usages of any particular part of the country. To disturb such usages and to do violence of the feelings on which they are founded, would be unjustifiable whatever the opinions of text writers on the abstract question may be: and it can seldom, if ever, happen that any amelioration of the customs of a country can atone for an outrage on public feelings and moral principle. In Malabar the evil above noticed may be obviated by adjourning the Court to some unobjectionable place, viz., the house of a respectable Nair, the porch of a Pagoda, or Choultry within the precincts of some sacred ground, &c., when although the Court be presided over by an European, all prejudices and objections vanish.—*C. O. 12th July*, 1830, *A.*

*Sec.* XVII.—Where on reference to the examinations before the lower tribunals, a witness be found by a Criminal Court entirely ignorant of the matter at issue in the trial, he should not be sent before the Session Court. But if so sent as capable of speaking to material facts, although other witnesses may have spoken to the same facts, his evidence ought never to be dispensed with by the Session Judge, for the Judge himself, or even the prisoner by cross examination, may draw from him matter highly corroborative of the evidence of the other witnesses, or such as may tend greatly to invalidate their testimony.—*C. O. 15th July*, 1830.

*Sec.* XVIII, *Clause* 1.—The importance of exactness in recording the depositions of witnesses in the words used by Deponents, as a means of facilitating conviction in cases of perjury, appearing to be great, the attention of the Courts is called to the necessity of observing the greatest accuracy in this part of their proceedings.—*C. O. 16th May*, 1832, *A.*

*Clause* 3.—When a deponent is described as "in service" its nature should be specified, as Tahsildar, Subadar, Sepoy, Peon, Butler, &c.—*C. O. 10th Nov.* 1840.

The questions put to elicit this information should not be inserted in the record, but the

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particulars specified at the head of the examination of the party or witness thus : 1st Wit. A. B. son of C. D. of the ——— religion ——— caste by profession ——— aged —— years, inhabitant of ——— having made solemn affirmation, and the admonition prescribed by Clause V, Sec. XVIII, Reg. VII of 1802, being read to him, the following examination takes place.—*C. O.* 17*th January,* 1815.

If a deponent be unable to specify his age, or evidently give a false statement regarding it, the apparent age should invariably be inserted.—*C. O.* 16*th May,* 1831.

*Clause* 6.—In all cases where reference is made, in the proceedings of any of the subordinate tribunals, to previous contradictions in the evidence of the witnesses, translation of both depositions shall be submitted.—*C. O.* 14*th March,* 1832, *and* 8*th January,* 1836.

*Sec.* XXI.—Sentences of imprisonment take effect from the date of the sentence.—*C. O.* 14*th February,* 1831.

*Sec.* XXIII.—Whenever it may appear to a Session Judge that any persons brought before him for trial, have been committed on insufficient grounds, it will be proper that the Judge should call the trial, and having declared that there are not sufficient grounds for proceeding, order the discharge of the parties, reporting the grounds of his not proceeding to trial for the information of the Foujdaree Udalut.—*C. O.* 26*th Nov.* 1821.

*Sec.* XXVI.—This opinion must be *distinct* as to the guilt or innocence of the prisoners, it is the manifest duty of the Judge to make up his mind as to the result of the evidence adduced before him—and a *distinct* opinion on the merit of the case, together with the grounds of that opinion, should be laid before the Foujdaree Udalut.—*C. O.* 24*th Dec.* 1821.

There is no duty more imperative on a Session Judge when he convicts several individuals of the great crime of murder, and recommends one alone for the irrevocable sentence of death, than to aid the superior and more distant tribunal by a specific selection of the individual to be condemned, and a statement of his reasons for that selection.—*C. O.* 14*th March,* 1834.

The letter of reference must contain a short summary of the evidence generally, and a detail of that part only on which the Judge's opinion of the guilt or innocence of the accused party rests.—*C. O.* 31*st July,* 1839.

*Sec.* XXXIV.—This Section virtually prohibits Criminal Courts from taking cognizance of any charge of sorcery. If such charge be brought before a Criminal Judge he should be careful to ascertain whether or not any injury has been inflicted on the supposed sufferer, if no injury has been sustained the charge is to be dismissed, if it has been, evidence should be taken to the overt act charged, and if the prisoner appear liable to commitment, the indictment is to be framed for such overt act. A confession of sorcery, under the Mahomedan law, does not subject a party to punishment unless it shall appear that injury has ensued, and accusations of sorcery, witchcraft, or other similar charges, are to be disposed of on these principles.—*C. O.* 6*th Dec.* 1841.

*Sec.* XXXV.—The inscription of "Godna" is positively enjoined in all cases in which a sentence of transportation may be confirmed.—*C. O.* 1*st May,* 1815, *and* 29*th May,* 1816.

Save on those sentenced by Military authority.—*F. U.* 21*st Sept.* 1836, *C. R.* 14.

Warrant in such cases to be as nearly in the following form, as the wording of the sentences of the Foujdaree Udalut will admit:

(Seal of the Session Court.) No.

*To the*

Whereas A. B., charged with ———, having been tried by the Session Court, has been convicted, and finally sentenced by the Court of Foujdaree Udalut, to receive —— lashes with a cat-of-nine tails, and to be imprisoned and transported to such place or places beyond sea, as the Governor in Council shall appoint, there to be imprisoned and kept to hard labor in irons on the public roads, or other public works, for and during the period of his natural life: It is hereby ordered that, in execution of the said sentence, and in conformity with the provisions of Section XXXV, Regulation VII of 1802, you do cause the said A. B. to be corporally punished with —— lashes with a cat-of-nine tails, and the particulars specified in the said Section to be inscribed upon his forehead by the

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process termed "Godna," and that you do warn the said A. B. of the penalty which, under the provisions of Clause 2, Section IX, Regulation XV of 1803, he will incur by returning without permission from the place to which he may be transported, and cause the said A. B. to be lodged in the gaol of the Zillah of Chingleput, there to remain till the orders of the Governor in Council may be given for his transportation beyond sea, agreeably to the terms of the sentence so passed upon him: and that you do return this warrant to me with an endorsement, attested by your official seal and signature, certifying the manner in which the same has been executed, as prescribed by Section XIII, Regulation VIII of 1802.

Given under my hand and seal of the Court, this———day of————, &c.—*C. O. 18th August,* 1824.

*Sec.* XXXVII.—This report is now to be blended with the last half yearly reports upon the operations of the Magistracy and Police, submitted to the Foujdaree Udalut under the instructions of Government as contained in C. O. 16th November, 1829, B. Under this arrangement, the report for the first six months of the year, prescribed by the Order of 16th November, 1829, will be forwarded to the Foujdaree Udalut, and subsequently to the Government as usual, whilst the report for the following half year, will contain such observations and remarks of general interest, as would have formed matter for two distinct reports.—*C. O. 30th April,* 1845, *A.*

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# REGULATION VIII, 1802.

*Sec.* VIII.—1. With the view of diminishing the difficulties which are experienced by parties desirous of appealing in Criminal matters to the Foujdaree Udalut, the Court direct that the Session Judges receive Petitions of Appeal from their own sentences and orders, and transmit the same immediately to the Register of the Foujdaree Udalut.

2. The Session Judges will forward such Petitions without a separate letter. An endorsement is invariably to be made on each Petition containing the following particulars: the date on which it was presented to the Session Judge, the date on which it is forwarded to the Foujdaree Udalut, its number, which will be according to the order in time of its presentation, the number of the case on the Calendar to which it refers, and the year in which the trial was held; and beneath, the signature of the Session Judge.

3. It is to be understood that parties who may prefer to present their Petitions to the Foujdaree Udalut in person or through an accredited agent, are at liberty to do so.

4. The Session Judges will cause a translation of this Order in the languages of their respective Districts to be affixed to the walls of their Court Houses, in a conspicuous place, for the information of all whom it may concern.

5. The Orders which the Foujdaree Udalut may pass upon the Petitions transmitted to them pursuant to this Order, will be communicated to the Session Judges for the information of the Petitioners.—*C. O. 6th July,* 1847.

*Sec.* XIII.—Death Warrant to be in all cases as nearly in the following form as the wording of the sentence of the Foujdaree Udalut will admit:

(Seal of the SessionCourt) No.

*To*
*the Subordinate Judge in the Zillah of*

Whereas A. B., charged with————, having been tried by the Session Court, has been convicted, and finally sentenced by the Court of Foujdaree Udalut to suffer death: It

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is hereby ordered that execution of the said sentence be made and done by causing the said A. B. to be hanged by the neck until he be dead, at the usual time and place of execution, so soon as conveniently can be after the receipt of this warrant, and that you do return this warrant with an endorsement, attested by your official seal and signature, certifying the manner in which the sentence has been executed, as prescribed by Section XIII, Regulation VIII of 1802.

Given under my hand and seal of the Court, &c.—*C. O. 25th July*, 1821.

In order that capital punishments may make a stronger impression on the public mind, it is desirable that they should be solemnly and publicly announced; and to form a correct judgment of the result of such examples, it is desirable that a record should be made of the impression, not only on the spectators, but on the convict himself, of these necessary acts of justice. The Court of Foujdaree Udalut accordingly direct that, as soon as can be, after the receipt of death warrants, the final sentence be communicated to the convict, in open Court; and that in making returns to death warrants, besides stating as at present, the estimated number of spectators attending the execution, and the apparent impression made upon them by it, the Subordinate Judges do specify the date and hour when the final sentence was communicated to the convict, and certify that the same took place in open Court; and that in these returns, they do further specify, in a particular manner, the effect on the convict of such communication, and his conduct thenceforward until his execution; reporting whether he expresses contrition for the offence for which he suffers, denies his guilt, or makes any confession of it, and his behaviour on the scaffold, and conversation there.—*C. O. 3d May*, 1830.

The information required by the above Order, is to be furnished in a separate letter to accompany the returned death warrant, which return is to be confined to simply certifying execution.—*C. O. 20th Sept.* 1830.

All warrants should be returned to the Court, by which they are issued, after the complete execution of the sentence, with an endorsement, certifying the manner in which the sentence has been carried into execution.

In the case of a sentence, both for corporal punishment and imprisonment, the execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but as the warrant in this case will not have been completely executed until the prisoner has undergone the period of imprisonment adjudged against him, the Criminal Judge should retain the warrant until the expiration of the term of imprisonment, or return it duly endorsed, should the prisoner die during the course of the term: when several prisoners may be included in one sentence, an endorsement of the decease of such as may die before its full execution should be made on the warrant, as in the case of corporal punishment;—in the event of the prisoners being removed to another Zillah, the warrant should be transmitted to the Criminal Judge or the Magistrate, to whose custody they may be consigned, whose duty it will be to return it, duly endorsed, to the Session Court on the expiration of the sentence, or the death of the prisoners.

In cases of transportation beyond sea, the Court of Foujdaree Udalut do not see any ground for departing from the form of warrant, prescribed by their Circular Orders of 18th August last: it is obvious to remark, that in these cases full execution of the sentence cannot be certified by the officer to whom the warrant is addressed, or by the Criminal Judge in the Zillah of Chingleput, and on this point the Court consider it sufficient, that it should be certified to the Session Court, that the convicts have been forwarded to the depot of Chingleput, in view to the execution of the sentence.

The Criminal Judge on the arrival of every warrant, which from its tenor does not admit of immediate execution should acknowledge its receipt. The warrant when finally and completely executed, being returned to the Session Court.—*C. O. 7th March*, 1825.

*Sec.* XX.—When a Magistrate may recommend the tender of a conditional pardon to a "supposed accessary" to a crime, who may not be in custody, it will, of course, be requisite that he should satisfy the Court of Foujdaree Udalut, that the individual is strictly speaking an accessary, and not a principal, that his information is likely to lead to the apprehension or conviction of the principal offender or offenders, and that the ordinary means have been found ineffectual for the discovery and apprehension of the principals.

It is manifest, that the provisions of Section XX, Regulation VIII of 1802, should be resorted to with great caution, in order to prevent the escape of the principals in atrocious crimes, who, if inadvertently admitted to a conditional pardon, could not, without great rigour, be excluded from the benefit annexed to the performance of the conditions; and that when, in consequence of the evidence possessed by the Magistrate, there may not exist this danger, the power should nevertheless be sparingly, as well as circumspectly, exercised; the fre-

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quent pardon of acknowledged accomplices, in murder, gang robbery, and other heinous crimes being obviously objectionable and repugnant to the ends of justice.—*C. O. 13th May*, 1824.

The application for authority to tender pardon, should be made direct to the Foujdaree Udalut, by the officer recommending it.—*C. O. 27th February*, 1832.

No person to whom the offer of a conditional pardon has been made shall be committed to take his trial, on the ground of failure to perform the conditions of such pardon, excepting by order of the Session Judge, who may have tried the case.—*C. O. 20th Aug.* 1832.

Whenever an offer of pardon may be authorized, under this Section, it shall be made in one or other of the following forms, according as the party to whom it is made has, or has not, confessed himself an accessary.

If he has not confessed—in the following form:

"You" (call the supposed accessary by his name) "are hereby informed, that an option is given you of being admitted as a witness on the part of Government touching" (here name the crime, and place and date thereof) "to which you are supposed to have been accessary.—And, that you may not be deterred from discovering all that you know respecting the said crime, and the persons concerned therein, by the fear of bringing punishment upon yourself; I do hereby, in the name of the Court of Foujdaree Udalut, promise that you shall receive a full pardon, to be confirmed to you under the Seal of the Court of Foujdaree Udalut, and the signature of their Register, for any criminal act or acts, connected with the said crime, of which you may confess yourself to be guilty, or which may appear against you by your depositions; on condition that you shall confess and discover fully and truly, every circumstance within your knowledge relative to the commission of the said crime and the persons concerned therein: Provided always, that if it shall be proved to the satisfaction of the Judge, by whom the charge for the said crime, shall be tried, that you were a principal in the said crime and not merely an accessary, as supposed; or that you have concealed, or misrepresented, any material fact, within your knowledge, touching the said crime, in that case, you shall not be entitled to the pardon promised, but shall be put upon your trial, according to law, for your part in the said crime; but your own confessions and depositions made in consequence of this present promise of pardon, shall not be received in evidence against you; nor shall you suffer any punishment unless you shall be proved guilty by other evidence."

If the party to whom the promise is made has voluntarily confessed himself an accessary before the public officer, by whom the pardon is offered, or confirmed a former confession to that effect, the offer is to be made in the following form:

"You (call the party by his name) have confessed yourself an accessary to (here name the crime, and place and date thereof), and thereby justly subjected yourself to the punishment prescribed by law for the said crime. With the view, however, of discovering the principals in that crime; I do hereby, by authority received from the Court of Foujdaree Udalut, promise that you shall receive a full pardon, to be confirmed to you under the Seal of the Court of Foujdaree Udalut, and the signature of their Register, for any criminal act or acts, connected with the said crime, of which you have confessed, or may confess yourself to be guilty, or which may appear against you by your depositions, on condition that you shall confess and discover, fully and truly, every circumstance within your knowledge, relative to the commission of the said crime and the persons concerned therein: Provided always, that if it shall be proved, to the satisfaction of the Judge by whom the charge for the said crime shall be tried, that you were a principal in the said crime and not merely an accessary, or that you have concealed, or misrepresented, any material fact, within your knowledge, touching the said crime, in that case, you shall not be entitled to the pardon promised, but shall be put upon your trial according to law, for your part in the said crime; and in such case your confession already made, before this present offer of pardon, shall be good evidence against you, but nothing deposed by you in consequence of this present promise of pardon shall be received in evidence against you, nor shall you suffer any punishment in consequence thereof."

The informant shall then, if he accepts the offer, give his evidence on oath; and shall be dealt with in exact conformity to the declaration above directed to be made to him.—*C. O. 3d April*, 1828.

*Sec.* XXIII.—The provisions of this enactment, and of Section VII, Regulation I of 1810, apply to all guards having lawful authority to retain persons in custody, and suffering them to escape, except to "Peons properly so called," to whom the provisions of Section XI, Regulation XIII of 1832, are applicable.—*C. O. 10th April*, 1844.

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# REGULATION XV, 1803.

*Section* II, *Clause* 1.—The Futwah should invariably specify, all the grounds on which a prisoner is declared liable to discretionary punishment, it being within the knowledge of the Foujdaree Udalut, that the Law Officers deem it sufficient to assign only one of several grounds, which may exist in the same case in bar of a Futwah of Hud; while the several provisions contained in Section II, Regulation XV of 1803, require that a different course shall be pursued according to the nature of the provisions of the law which bar the specific penalty.—*C. O. 22d July*, 1822.

In all cases not referrible, translation of the Futwah must be entered in the Calendar; and the Session Judges must state, succinctly and clearly, their opinion of the case, whether they concur in the Futwah *entirely*, or concur with the Law Officer as to the guilt or innocence of the prisoner, but on different grounds, and what those grounds are; and when evidence before the Session Court is in contradiction to, or at variance with the evidence previously given, the points of difference should be stated.—*C. Os. 6th Sept.* 1819, *28th May*, 1822, *19th June*, 1828, *and 22d Feb.* 1842.

Session Judges must invariably enter in the Calendar, the Clause, Section, and Regulation or Act, under which their sentences are passed, or on which the determination for reference, or otherwise, may be founded.—*C. O. 2d Sept.* 1830.

Copies of Warrants issued for the release of any prisoners, in a trial referred to the Foujdaree Udalut, should be appended to the record.—*C. O. 21st July*, 1823.

*Clause* 3.—For the due enforcement of the provisions contained in this and the following Clause, it is obviously requisite, that the provisions of Clause first, requiring statement of the grounds of all Futwahs of discretionary punishment, in cases specifically provided for by the Mahomedan law, or, in other words, the grounds existing in bar of a sentence for the specific penalty, should be uniformly observed. With reference to Clauses 1 and 5 of this Section, it is to be observed, that when the offence may have been specifically provided for by any legislative enactment, no second Futwah is to be taken, but the Judge, provided he concur in the conviction, is required to pass sentence for the prescribed punishment, as directed by Clause 2.—*C. Os. 28th May*, 1822, *and 23d April*, 1832.

The Futwah being Zun-i-ghalib-i-doozdee, a second Futwah should be taken under the provisions of this Clause.—*C. O. 22d July*, 1822.

*Clause* 4.—In cases where Hud is declared to be barred in consequence of the property stolen not amounting to the Nisab, a second Futwah must be taken under this Clause, and the prisoner sentenced accordingly, unless the circumstances of the case are considered to demand a mitigation of punishment under Section IV, Regulation I of 1825.—*C. O. 19th May*, 1845.

Hud being barred owing to prisoners convicted on confession before the Criminal Court retracting before the Session Court, second Futwah should be taken.—*C. O. 22d July*, 1822.

Hud being barred.

1st. Because Prisoner in confessing, did not admit that he took the property out of custody.

2d. Because Prisoner in confessing, used the word "found" instead of "stole the articles" on entering the window.

3d. Because property was recovered before complaint was made to a Judge. All these are scrupulous objections of the nature contemplated in this Clause, and require second Futwah to be taken as provided.—*C. O. 14th October*, 1822.

*Clause* 6.—This Clause authorises Session Judges to require security when notorious bad character may be proved to their satisfaction, whatever may be the Futwah of the Law Officer.—*C. O. 5th June*, 1815.

In case of a requisition for security the grounds of such requisition must always be distinctly specified in the Calendar.—*C. O. 6th Sept.* 1819.

*Clause* 7.—This Clause applies to cases of conviction and sentence to discretionary punishment in crimes to which neither the legislature nor the Mahomedan law have annexed any specific penalty, under which description may be classed many of the higher descriptions of fraud or misdemeanour.—*C. O. 20th November*, 1835.

Corporal punishment when, awarded, shall be inflicted at such time as the Court, by whom the sentence is passed, shall think proper to determine.—*C. O. 6th January*, 1847, *B.*

It is competent to a Sessión Judge to sentence "to labour without irons," and for such persons it appears that employment may be found within the jail.—*C. O. 8th Oct.* 1821, *A.*

But the Court of Foujdaree Udalut observe, "that a sentence of imprisonment must in general be wholly nugatory, unless accompanied with hard labour and irons during the term of imprisonment," and that a sentence of imprisonment "without labour" must, when considered with reference to its general operation eventually, tend rather to the encouragement, than the suppression of offences.

The Court at the same time observed, that cases might occur in which, considering the rank or circumstances of the person convicted, imprisonment may be held to be a sufficient punishment.—*C. O. 31st August*, 1833, *B.*

*Sec.* III, *Cl.* 1.—In all cases of theft, or robbery, the mode of disposing of the property alleged to be stolen, which may be produced before the Session Court, shall be a question for the determination of the Judge presiding at the trial, whose duty it will be to issue orders for the restitution of the property to such persons as may be proved to be lawfully entitled thereto, or such other instructions for its disposal, as the circumstances of the case may appear to him to call for.—*C. O. 8th July*, 1836, *B.*

Opinion being sought as to light in which it is proper to regard cases of stealing grain by a number of persons from an open field, when there are no circumstances of considerable aggravation, and in which it may be remarked, that the offence is committed for the sake of food, and in numbers, rather with the view of carrying off the grain, than of support in case of resistance; though on an alarm being given, sticks are frequently used to beat the watchers; the Foujdaree Udalut observe that, in such cases, the material point to be decided is, whether the crime was committed secretly, when it would be merely common theft, or openly, by force or intimidation, so as to bring it within the definition of robbery by open violence, contained in Clause first, Section III, Regulation XV of 1816. The Court on this point remark, that numbers alone, if they proceed openly to attack, may intimidate and overawe even when unarmed, and that a stick taken by the secret thief may, when detected, be so used as to change the offence into robbery by open violence, especially if such an attack is made by many, on the few watchers stationed to guard grain, an article particularly liable to depredation; and the more so, as long as it remains exposed on the threshing floor.

Whilst open attack, opposed to secret theft, will certainly bring this offence within robbery by open violence, the Court admit that circumstances may frequently justify a recommendation for a mitigation of punishment, where hunger alone has been the inducement to crime, and the violence used has, though open, been attended by no material personal injury. But Session Judges should bear in mind, particularly in seasons of scarcity when this offence is the most frequent, that the evils of a general scarcity of food are liable to be greatly aggravated by such offences, usually terminating in a wanton waste of the means of sustenance, the regular distribution of which is checked, and often entirely prevented by them; and ought therefore to discriminate carefully between the two descriptions of cases above mentioned.—*C. O. 6th April*, 1830.

Para. 2d.—"Highway robbery by a single unarmed person, does not come within the "definition of 'robbery by open violence,' as defined in Clause first, Section III, Regula-"tion XV of 1803, but is distinct from it. According to the Mahomedan law, it would be "punishable by the amputation of two limbs, and consequently (under the commutation "directed in the Regulations) 14 years' imprisonment. Though intimidation may be used "by a single unarmed robber, it is only when he is armed with an 'offensive weapon,' or "accompanied by others in 'a gang,' that the Clause in question applies. In cases of a "single unarmed robber, the Mahomedan law exclusively applies."

Para. 3d.—"Where the prisoner is fully convicted by the law officer, and sentenced to "discretionary punishment, if the Regulations have denounced the penalty to be adjudged, "no second Futwah is requisite. But if the conviction is incomplete, and the acquittal "proceeds on the incompetency of the witnesses, or any of the grounds specified in Section "VIII, Regulation I of 1825, a second Futwah should be taken."

Para. 4th.—"It is only in cases where the regulations have not annexed a specific "penalty to the offence, that in the event of conviction, and sentence by the Law officer to "discretionary punishment, it becomes necessary in crimes to which the Mahomedan law "has annexed a specific punishment (Hud), as it does in all cases of robbery by a single "unarmed person, to take a second Futwah, under Clause third or fourth, Section II, "Regulation XV of 1803, according as the said specific sentence of Hud, may be opposed "by the obstacle of a conviction under (Ghalib-oo-zun) strong presumption, or by a "(Shoobah) scrupulous distinction. In either case, by means of a second Futwah, the "British code overcomes these obstacles."—*C. O. 20th Nov.* 1835.

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Theft is distinguished from robbery by its being a secret taking away, whilst the other is open, by violence or dread. Any robbery by more than one individual, is gang robbery, and is to be classed as such. It is hardly necessary for the Judges to add, that this explanation for the guidance of the Magistracy in filling up statements, does not affect, in any respect, the definition of the crime technically known to the Session Judges by the name of "robbery by open violence," as explained in Section III, Regulation XV of 1803. —*C. O. 23d Feb.* 1829.

*Sec.* IV, *Cl.* 1.—In respect of the liabilities of parties convicted, and undergoing sentences for minor offences, and being afterwards found to be guilty of more heinous crimes, such as herein contemplated, &c. it has been ruled—That a prisoner who has been tried and convicted of robbery, and received a judgment of the specific penalty, cannot be tried on another charge, subsequently brought against him, for an offence, in all respects the same, committed antecedently to his trial and conviction. But if the robbery subsequently charged against him were attended with homicide, or other act of aggravation, incurring a greater punishment than that to which he may have been sentenced to suffer; or if the charge be for murder; or if for robbery only, and the case already tried not having been fully proved, the Futwah may have declared the prisoner liable to discretionary punishment only, the measure of which, in consideration of circumstances altering the nature and diminishing the criminality of the offence, may have been fixed by the Court below the specific penalty; in either of these cases, such prisoner must be brought to trial on the further charge; and if the further charge be proved, the punishment pronounced against him on the former trial, will be lost in that which necessarily follows conviction of the greater offence.

When an offence is newly discovered, which had been committed before sentence had been passed for that, of which a prisoner is convicted, if the new offence be minor, or equivalent to that of which the prisoner has been convicted, the punishment for it merges in the sentence the prisoner is already undergoing; but if the new crime be of a more grave description than that of which the prisoner has been convicted, its superior enormity requires a new trial; and the sentence passed on it, if more severe, will no doubt take into consideration the minor sentence, the prisoner is already undergoing for the lower offence. —*C. O. 27th May,* 1829.

All the cases mentioned in this and the following clause are necessarily referrible to the Foujdaree Udalut.—*C. O. 26th Oct.* 1820.

*Clause* 2.—The personal injury here contemplated does not embrace trifling injury, as appears clearly by the definition given, viz., "torture" or cruelty not occasioning homicide; but the extent of injury proved should be entered in the column of remarks.—*C. O. 23d Nov.* 1820, *and 15th May,* 1832.

And under this Clause, it is not competent to a Session Court to dispose of a case of robbery by open violence, in which, "any person may have been wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty not occasioning homicide," or where, "a dwelling house or houses may have been set on fire, or any other criminal aggravating act committed in the prosecution of a robbery or intent to rob."

In all such cases, the prescribed penalty being transportation for life, the trial must be referred to the consideration and final judgment of the Court of Foujdaree Udalut.—*C. O. 15th May,* 1832.

When the *charge* may fall within the scope of these Clauses, and upon the *trial* it be be found that the offence is incorrectly described in the charge, and that the accused are punishable by the Session Court under the following Clause, a full explanation must be given in the column of remarks, of the degree of criminality brought home to the prisoners.—*C. O. 9th April,* 1825.

*Sec.* VI, *Cl.* 1.—When capital punishment is recommended, translations of the whole proceedings held before the Magistrate, or Police, must be submitted with the record of the case—but they need not be copied fair, the draft translations being sufficient. The whole proceedings before the Session Court must in all cases be copied fair; but in cases not involving capital punishment, any papers received from the Magistracy or Police, which the Session Judge may consider unnecessary to the conviction or defence of the prisoner, may be omitted; provided that the report of the Police Officer, prescribed in Clause 4, Section XXVII, Regulation X of 1816, be always sent; and the Judge should state in a memo. at the foot of this report, which of the documents enumerated in its last column he considers it unnecessary to submit.—*C. Os. 19th Jan. and 28th June,* 1825, *10th Jan., 20th May, and 7th Sept.* 1840.

*Clause* 2.—Under this Section, it is competent to a Session Judge to direct the release,

on security, of prisoners acquitted in a trial, though that trial may be referred to the Foujdaree Udalut for sentence on other prisoners therein concerned.—*C. O. 23d June,* 1835.

*Note.*—For the latest and most precise directions as to preparation of "Record" in "Referred Trials," see Circular instructions conveyed in Pros. F. U. 11th Nov. 1847.

*Sec.* VIII, *Cl.* 4.—Convicts sentenced to transportation shall be sent to Chingleput, to the intent that execution upon the said sentence may be done as opportunity offers. The Officer in charge of the Jail at Chingleput will have in readiness, the convicts in that Jail under sentence of transportation, for the first opportunity of sending them to Prince of Wales' Island.—*C. O. 2d Feb.* 1805.

*Sec.* IX, *Cl.* 2.—For the purpose of establishing in cases of the return of Convicts from transportation, that they have received due notice of the penalty to which they are liable under this Clause, the Criminal Judge is required, in open Court, to inform the Convict of the penalty attached to his return, and to certify by endorsement on the Warrant—for form of which see C. O. 18th August, 1824, noted under Section XXXV, Regulation VII of 1802.—*C. O. 30th August,* 1809.

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## REGULATION I, 1810.

*Sec.* VII, *Cl.* 1.—All guards of whatever description, having lawful authority to detain persons in custody, and suffering persons in their custody to escape, are punishable under Sec. XXIII, Reg VIII of 1802, and this enactment—by dismissal, if guilty of simple neglect—by prosecution before the Session Court if guilty of any connivance or further criminality: the jurisdiction and punishments prescribed by Sec. XI, Reg. XIII of 1832, being applicable only to peons properly so called.—*C. O. 10th April,* 1844.

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## REGULATION VI, 1811.

*Sec.* III, *Cl.* 1.—More than one individual cannot be included in an indictment for Perjury—each person accused of this crime, however similar his offence may be to that of others, must be separately indicted, and the case against him be made a separate number in the Calendars.—*C. O. 6th August,* 1832.

According to the Mahomedan law, Perjury may be proved in three ways—1st, by the confession; 2d, by the testimony of credible witnesses; 3d, by the retraction of evidence—i. e. absolute certainty of a person's appearing alive to whose murder evidence may have been given.—*C. O. 3d May,* 1821.

*Sec.* IV, *Cl.* 1.—The definition of the crime being thus precise, the charge against the party supposed to be guilty of it, ought to be framed with corresponding precision. In view to correctness in this respect, the Foujdaree Udalut direct, that the following instructions be in all instances conformed to, as far as the nature of the case will admit.

The indictment should first state—That A. B. being a party, or a witness in certain civil suit or criminal trial, as the case may be, and being called upon to depose to certain matters of fact, material to the issue of the said suit, or trial, did on such a day, and before such a Court, after having been duly sworn, or placed on solemn affirmation, to depose truly in the said matter, depose on oath, or under solemn affirmation, in words to the following effect (here recite the words on which the Perjury is assigned) whereas in truth and fact (here recite the fact in opposition to the averment of the accused) and further that it is material to the issue of the said suit, or trial, to show that, &c. and that the said deponent well knew at the time of his so swearing, or making such solemn affirmation, that his deposition so given was false, and that he, the said A. B., did therefore commit wilful and corrupt perjury.

On the establishment of these particulars by evidence, must depend the issue of a trial for Perjury, failure of proof on any one of the points specified in the definition, contained in this Section, must be fatal to the prosecution, because the crime is defined to consist

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not in one or more of these particulars, but in all and every one taken together—and it is of course necessary that the testimony with respect to the fact opposed to the deposition of the accused be full and undeniable.—*C. Os.* 31*st Jan.* 1814, *and* 31*st Jan.* 1820.

Copy of the indictment, framed as above directed, is to be entered in the column of the Calendar, headed "Abstract of the Charge."—*C. O.* 6*th Feb.* 1832.

But in the Criminal Reports, an abstract merely, as in other cases need be given.—*C. O.* 12*th May*, 1832.

*Clause* 2.—A Suborner may be brought to trial although there may have been no previous trial and conviction for the Perjury—the fact of the Perjury in the first place, and then of the subornation, being established on the trial of the Suborner.—*C. O.* 15*th June*, 1835.

An indictment for Subornation of Perjury should state—That A. B., intending to pervert the due course of justice, did suborn C. D., to appear as a witness in a certain civil suit, or criminal trial, (as the case may be) and falsely to swear and give in evidence certain matters, material to the issue of such suit, or trial, in substance and to the effect following (here recite the substance of the deposition of the person suborned), and that the said C. D., upon the trial of the said case, in consequence of such subornation did appear as a witness, and having been duly sworn, did depose in words to the following effect (here recite the words on which the Perjury is assigned). Whereas in truth and in fact (here recite the fact in opposition to the false evidence) and that the said A. B., at the time he suborned the said C. D. falsely and corruptly to swear as aforesaid, well knew that such his evidence was false, and that it was material to the issue of the said suit, or trial, to show that, &c. and that the said A. B. did therefore corruptly suborn and procure the said C. D. to commit wilful and corrupt perjury.—*C. O.* 19*th August*, 1835, *No.* 49.

*Clause* 3.—In every case of forgery submitted for the judgment of the Foujdaree Udalut, the original document in which the forgery is charged to have been committed, must be forwarded with the record of the trial for their inspection.—*C. O.* 5*th June*, 1837, *A.*

An acquittal in a trial for forgery gives no validity to the alleged forged instrument.—*C. O.* 23*d March*, 1832.

In all cases of Forgery, whenever from the evidence and the circumstances of the case, there are grounds to charge the prisoner with also uttering the forged instrument, knowing it to be forged, with intent to defraud, a charge for such uttering shall invariably form a second count in the arraignment, distinct from that of fraudulently fabricating the instrument; and in each count the words, with "intent to defraud A. B." (here enter the name of the party intended to be injured) shall be added. If the uttering consist in having filed the document in Court, the number of the suit or appeal should be specified; and if filed by a Vakeel, the Prisoner should be charged with having uttered it by causing the Vakeel to file it with intent, &c.—*C. O.* 20*th April*, 1840.

To constitute the crime of Forgery here defined, the effect and object of the fabrication or alteration, must be to defraud some party of money or other property, and also to injure him. Where those requisites do not occur, the act may be punishable under the Mahomedan law as a misdemeanor, but it cannot be treated as a forgery.—*C. O.* 28*th August*, 1841.

Imitation of a Custom House Mark is not punishable as a forgery. The penalties for forgery were not meant to include frauds on the Customs, other than such as might be committed by means of forging a pass, or some paper commonly issued from the Custom House.—*C. O.* 8*th May*, 1815, *A.*

*Sec.* V, *Cl.* 1.—Adverting to the prevalence of attempts in the Criminal Courts to establish a plea of alibi by perjury, the Foujdaree Udalut desire that in all such cases the witnesses appearing to have so sworn falsely, be committed to take their trial for perjury, if there shall be evidence attainable to establish the charge against them.—*C. O.* 12*th July*, 1833.

From this Section it is clearly to be inferred, that all Courts, Civil or Criminal, are competent and bound to commit persons whom they may consider to have been guilty of perjury before themselves.—*C. O.* 28*th Oct.* 1823, *B.*

The restriction imposed by Sec. VIII, Reg. X of 1816, does not refer to the special cases of perjury, subornation of perjury, and forgery, which falling under the judicial view of Sudder, Foujdaree, Civil, Session, or Subordinate Courts, may, by these superior tribunals, be ordered under this Section to be brought to trial before the Session Courts.

Such cases are required to be committed for trial on the mere order of the proper Court, and as the present Magistrates can make no such committal, it follows that to maintain

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the law it is essential that such duty should be performed by the proper tribunal exercising this power, whatever may be its present denomination.—*C. O. 12th Feb.* 1834.

The Criminal Judge, as the only committing officer recognized in the Regulations, should act with respect to all charges of perjury brought before him by an inferior authority, on the same principles as in cases of a different description, and should release or commit the prisoner, according as he may be of opinion that the charge is, or is not, supported by the evidence before him.

In all such cases, the proceedings on which the charge of perjury is founded, should be sent to the Criminal Judge by the officer before whom they may have been held, with his sentiments upon the case, together with the prisoner and witnesses, and if the Criminal Judge should be of opinion that there are grounds for putting the accused party on his trial, under the provisions of Reg. VI of 1811, he should prepare the indictment in the mode prescribed by the C. O. 31st Jan. 1820, and appoint the Government Vakeel to conduct the prosecution.—*C. O.* 1*st August*, 1821.

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# REGULATION IX, 1816.

*Sec.* III.—In all Official papers attested by Magistrates, that designation only must be employed.—*C. O. 29th Jan.* 1818.

Instructions issued to Magistrates by the Foujdaree Udalut, through the Session Courts, should be furnished to those officers by precept in the prescribed form, requiring return thereto within a limited time; and certified copies of the said precepts and returns be transmitted with the return of the precept of the Foujdaree Udalut by the Session Court. —*C. O.* 4*th August*, 1823.

*Sec.* VI.—This contemplates the exercise, by Assistant Magistrates, of such duties as may be committed to them by the Magistrates with whom they are stationed: and the authority delegated to Assistants, when stationed in any subordinate town, under Sec. XLI, Reg. XI of 1816, is to be exercised only within the limits of such town, and no part of the Regulations can be construed to authorize a Magistrate to delegate to his Assistant, a general power to exercise without limitation or control, the whole of the duties of his office. —*C. O. 26th August*, 1818, *B*.

*Sec.* IX.—The Statement of crimes and punishments, already furnished to each of the Magistrates, should be translated into the current language of the District, and furnished to each of the heads of the District Police, as directed by Government, with instructions to expose it in his Cutcherry, for public information.—*C. O. 22d March*, 1830, *A*.

*Sec.* XII, *Cl.* 2.—This form cannot always be exactly retained—as in the latter part of the following Section, the Magistrate is authorized to issue process in cases which would not admit of its use.—*C. O. 28th Oct.* 1824.

It is illegal to issue Blank Warrants, leaving a space for the insertion of the name, after apprehension; or general Warrants directing the apprehension for a particular offence, of persons to be pointed out, or named hereafter, by any specified individual. A Warrant for apprehension must not only specify the crime charged, but the name of the particular party, or parties accused thereof; and Magistrates should enjoin upon their Native Subordinates, a strict adherence to the provisions of the Regulations on that behalf enacted.—*C. O.* 13*th Feb.* 1840.

*Sec.* XIII.—The Agent must be authorized by regular Vakalutnamah, which, however, need not be on a stamp.—*C. O. 23d Oct.* 1828.

As a Warrant ought always to contain the name of the person charged with the execution of it, the proper course to be adopted by a Magistrate, in order to procure the apprehension of a person resident in a different Zillah, is to apprize the Magistrate of that Zillah by letter, of the grounds existing for the apprehension of the individual, which, with reference to the latter part of this Section, would be sufficient to authorize the latter officer to issue a Warrant for his apprehension.—*C. O. 28th Oct.* 1824.

*Sec.* XIV.—The principles here laid down, are applicable to the cases contemplated in Sec. XXXI, Reg. XI of 1816, in which parties may have been bound over, by a Head of Police, to appear before him.—*C. O.* 4*th Sept.* 1824.

A complaint referred for investigation by the Police, under the provisions of this Sec-

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tion, may, if the complainant adhere to his accusation before the Police, and have not been previously sworn to its truth before the Magistracy, if proved false, be punished under Regulation IX of 1832.—*C. O.* 17*th May*, 1841.

*Sec.* XXI.—Strict adherence to the limits of rewards sanctioned in this Section, is required; its provisions are not applicable to convicts who have escaped from Jail.—*C. O. 13th June*, 1837.

In the event of private individuals desiring to offer rewards for the apprehension of public offenders, under the circumstances specified in this Section, and making application to that effect to the Magistrate, that officer having received the amount in deposit, or having satisfied himself that it will be forthcoming, shall cause the offer to be proclaimed in such places within the district, or elsewhere, as he may consider expedient, and shall be authorized eventually to pay the reward, according to the conditions of the offer.—*C. O.* 23*d Feb.* 1839.

*Sec.* XXII.—To facilitate the re-apprehension of Convicts, and of others who have effected their escape from legal custody—not however including those under charge of the Native Police, previous to transfer to Magistrate or Courts for trial—it is directed that the person or persons, through whose means the re-apprehension of a Convict escaped from transportation, or whose sentence is imprisonment for life, may be effected, shall receive a reward of Rupees Fifty; or if his sentence be more than seven years, Rupees Twenty-five. The reward payable for the re-apprehension of all other persons, above specified, escaping from legal custody, shall be Rupees Ten. The officers in charge of Jails, or under whose orders the Convicts or persons above stated may be placed, will, on the escape of prisoners, immediately promulgate—without waiting for orders from higher authority—a descriptive list of their persons, and a notification of the amount payable on the re-apprehension of each, as above sanctioned.—*C. O.* 8*th March*, 1839.

The descriptive Roll should be in the following form:

| Name. | Caste. | Age. | Height. | Colour. | Particular marks or defects. | When received. | Reward payable. |
|---|---|---|---|---|---|---|---|

The publication of which, in the *Fort St. George Gazette*, will be a sufficient warrant to all officers concerned to do what is necessary on the occasion, and no other notification will be requisite.—*C. O.* 16*th May*, 1832, *B.*

*Sec.* XXIV.—This examination must be held by the Magistrate himself; the delegation of the duty here enjoined on the Magistrate, to any Native Officer, is wholly irregular, and unauthorized, and has a manifest tendency to obstruct the administration of public justice.—*C. O.* 21*st Oct.* 1819.

Whenever a person is acquitted before the Magistrate, of the charge on which he has been apprehended, the opinion of that officer should be distinctly entered in the proceedings, stating whether the acquittal arises from want of proof, or from the accusation being unjust, and his arrest uncalled for; and in either case, a copy of the Magistrate's order be given to him on application.—*C. O.* 17*th Dec.* 1834.

A Prisoner having been apprehended, and brought before a Magistrate under this Section, that officer is bound to hold a personal investigation. And the irregular reference of such a case to be disposed of by an officer of Police, will not render the prosecutor liable to punishment under Regulation IX of 1832, even though his complaint may be proved to have been false and malicious.—*C. O.* 17*th May*, 1841.

*Cl.* 2.—In cases where a delay of more than five days may take place in transmitting a case to the Court, its cause should be explained by a note to be appended to the paper sent with the prisoner.—*C. O.* 8*th Feb.* 1830.

In the event of the above explanation not being furnished, or when furnished being deemed unsatisfactory, the Criminal Judge is not authorized to call for any explanation from the Magistrate, that power being alone vested in the Session Court.—*C. O.* 1*st April*, 1830.

Prisoners, on being forwarded to the Criminal Courts, must be accompanied by a Memorandum, showing their previous convictions (if any) by the Police, Magistracy, or other authorities, and their previous general character and conduct—so far as it is currently known and estimated—in order that, if necessary, the Courts may call for evidence on those points.—*C. O.* 30*th March*, 1840.

*Sec.* XXV.—A copy of the original deposition or complaint of the Prosecutor, as well as of the Warrant, which may have been issued for the apprehension of the accused, should

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form part of these proceedings, and be laid before the Session Judges, and be included in the record of trials referred by them to the Foujdaree Udalut—as should also copies of any proclamations, issued for the apprehension of the accused. Magistrates should be careful themselves, and also enjoin the Police Officers under their authority, to require complainants in cases of robbery, and other heinous offences, to particularize the articles stolen, and the number of persons concerned, and to take down the names of such as may be alleged to be personally known to the complainants. A record of this description will often enable the Courts to judge how far the testimony delivered on the trial is founded on the deponent's original knowledge, or how far it may be biassed by a presumption of the guilt of a prisoner, arising from a knowledge of circumstances acquired at a later period.—*C. O. 4th March*, 1822.

All articles of stolen property, which may be produced in cases before officers of Police, the Magistrates and Criminal or Session Courts, shall be numbered; and the witnesses by whom the property may have been discovered, be invariably examined, as to the particular articles found on each individual prisoner; and throughout the examinations of the above mentioned authorities, the number of each article referred to must be specified.—*C. O. 16th May*, 1822, *and* 14*th Sept.* 1840.

The communication between the Criminal Judge and Magistrate, must be by letter.—*C. O. 28th July*, 1824.

*Sec.* XXVIII.—This is enjoined on Criminal Judges, by Sec. XVI, Reg. X of 1816, and the same rule ought to be observed by District Police, in taking down depositions generally, but more especially confessions delivered before them by prisoners. The particular attention of the authorities concerned, is called to this subject, and Magistrates are directed to instruct the heads of District Police under their authority, to attend to the rule in their examinations of parties and witnesses, as far as they may be in their power; recording in any instance, wherein there may be no person at hand capable of writing the language selected by the deponent, that such was the case, and certifying in all such cases, that the translation of the deposition, has been carefully explained to the said deponent, previously to his fixing his mark or signature thereto.—*C. O. 26th Nov.* 1824.

The particulars as to name, age, caste, profession, &c., shall be written at the head of each deposition, in the manner directed by C. O. 17th January, 1815, noted on Cl. 3, Sec. XVIII, Reg. VII of 1802.—*C. O. 28th Dec.* 1818.

*Sec.* XXXII.—Labour is not adjudicable under this Section.—*C. O. 28th Sept.* 1824.

*Sec.* XXXIII.—The imprisonment under this Section may be with hard labour.—*C. O. 7th Feb.* 1820.

The thefts which Magistrates are hereby authorized to hear and determine, are those of an inconsiderable amount, not attended by circumstances of aggravation, or committed by persons of bad character; the amount stolen must always be specified in the Calendar.—*C. O. 26th August*, 1818, *A.*

Parties convicted of several distinct offences, each coming within this description, cannot be sentenced to suffer the prescribed penalty several times over. A party deserving severer punishment than that specifically declared to be adjudicable by a lower, must be sent to a higher tribunal; and an individual appearing to have committed several petty thefts, would not himself, nor would the degree of his criminality come within the definitions given, both of the offenders punishable, and the offences cognizable by a head of Police or Magistrate.—*C. O. 28th Oct.* 1823, *A.*

Where purchasers or receivers may appear to be implicated as accessaries in such petty thefts, and not to be notorious or common receivers of stolen goods, the case is cognizable by the Magistrate under this provision.—*C. O. 26th Nov.* 1822.

*Sec.* XXXIV, *Cl.* 2.—The Criminal Judge cannot prevent the Jailer from executing such Warrant—but he may communicate with the Magistrate on the subject—and if it appear to him that the sentence of the Magistrate is unauthorized by the Regulations, it will be his duty to refer the subject to the Session Judge.—*C. O. 7th Feb.* 1820.

*Sec.* XXXV.—Labour is not adjudicable under this Section.—*C. O. 28th Sept.* 1824.

This is a modification of the penal enactments in regard to perjury; the provisions of which are strictly limited to the petty cases specified—and authority is hereby vested in Magistrates to punish the party instituting a false complaint in all cases which the officers are, by Sections XXXII and XXXIII of this Regulation, made competent to hear and determine.—*C. O. 28th Oct.* 1823, *B.*

All fines imposed by the Magistracy under this Section, must be entered in the Calendars submitted to the Session Court.—*C. O. 28th Sept.* 1836, *A.*

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*Sec.* XXXVIII.—If this be adhered to, it constitutes an efficient check on the practice of giving false dates of apprehension; it is impossible that the date on which such payment commenced should be mistaken.—*C. O* 1*st March*, 1824.

*Sec.* XL, *Cl.* 1.—In addition to these Calendars, Magistrates are directed to furnish, through the Session Court, to the Foujdaree Udalut, "Reports on the Police" from themselves and their Subordinates, made up to the 31st December in each year, to accompany the second half-yearly statement of crimes committed, having especial reference to those crimes, the perpetrators of which have altogether escaped detection.—*C. O.* 16*th Nov.* 1829, *B.*

*Cl.* 2.—In every case where punishment is awarded by a Magistrate, the provision of the law under which Sentence is passed, must invariably be specified in the Calendars laid before the Session Court.—*C. O.* 27*th May*, 1839.

*Sec.* XLIII.—The course of procedure on such Civil prosecution is laid down in Reg. I of 1823.

"The official superior of the Magistrate, at the Presidency" therein contemplated, is the Secretary to Government in the Judicial Department.—*C. O.* 8*th May*, 1835.

## MISCELLANEOUS ORDERS REFERRING TO THE DUTIES OF MAGISTRATE.

### 12*th February*, 1839, *and* 18*th September*, 1845.

The following Proclamation, translated into the vernacular language of the District, shall be, from time to time, as suitable occasions may present themselves, published, and read at the public Cutcherry of the Magistrate, as well as at the several Police stations, and also published by beat of tom-tom, at least once in every half-year.

PROCLAMATION.

It having come to the knowledge of Government, through various channels of information, that frequent instances still occur in many parts of the territory subject to this Presidency, of the murder of children, for the purpose of obtaining the gold and silver ornaments on their persons; and the Government being desirous of preventing, as far as possible, this atrocious and lamentable crime, without having recourse to measures of a prohibitory or penal nature, which might interfere with established usages, and occasion personal inconvenience;—It is hereby notified by the Court of Foujdaree Udalut, with the sanction of Government, to all parents, guardians, and others having the charge of young children, whether of the Hindoo or Mussulman religion, that experience has shewn the great danger of robbery and murder to which children are exposed, by being allowed to go abroad from the houses of their parents, or other persons having charge of them, with gold or silver ornaments, especially when not attended by trustworthy persons capable of protecting them; and that it is therefore the obvious duty of all parents, and others entrusted with the charge of children, to guard against such danger, and remove the cause of temptation, by not permitting any child under their charge to go from home with any gold or silver ornament on its person, except in company with themselves, or with other persons on whom they can depend, so as to guard against the possibility of any calamitous consequence, which they must be well aware has too often ensued, from a neglect of such precaution.

It is hoped, that the respectable inhabitants of the country, as well from feelings of natural affection, as from a sense of moral duty, will be induced to show a strict and ready attention to the admonition contained in this notification. All parents and others having charge of children, are accordingly hereby enjoined to maintain, by their example and influence, a careful observance of the precaution recommended to them in this Proclamation, which, it is confidently expected, will effectually check the prevalent crime adverted to, and thereby preclude the necessity of adopting any other remedy.

### 11*th December*, 1839.

All handcuffs and fetters should be as light and easy as is consistent with security.

### 10*th November*, 1827, 27*th April*, 1841, *and* 6*th May*, 1845.

When an officer in charge of a Jail shall apply to a Magistrate for a guard of Police Peons to escort Convicts to another station, the applicant shall furnish him with such information as he may possess relative to the general character of the Convicts, in order that if there be among them any desperate characters, the Magistrate may take the requisite precautions against their escape.

The Magistrate is in every instance to determine the mode of conveyance, and the strength of the guard; from the moment the Convicts are made over to the guard furnished by him, he, and not the officer in charge of the Jail, is to be responsible for their

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safe custody. All orders to the guard, and advances of money for the subsistence of the convicts are to be issued by him; the guard will make their report to him; and he will communicate the due delivery of the convicts, or any occurrences concerning them, to the officer in charge of the jail. The Magistrate of the district, whence in the first instance the party proceeds, shall furnish the peons with subsistence money for the prisoners, sufficient to last till they reach the next Sudder station of a Magistrate, whose duty it will be to act in like manner; and the same course will be pursued by each succeeding Magistrate, until the arrival of the prisoners at their ultimate destination. When between the point of starting and the ultimate destination, there is no intervening Sudder station, the Magistrate of the district will furnish the peons with subsistence money for the entire distance. The peons of one Zillah need not accompany the prisoners throughout the whole line of their march, except in cases of absolute necessity; they should be relieved by peons ordered to wait at the boundary station for the arrival of the convict party, or until further orders.

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# REGULATION X, 1816.

*Sec.* VII.—The Court of Foujdaree Udalut having ascertained by a reference to their Law Officers, that "persons secreting robbers against whom warrants are out, supplying "them with food and other necessaries, and adopting other means to enable them to es-"cape apprehension," are liable to punishment under the Mahomedan Law. The Court of Foujdaree Udalut resolve to point out to the several Criminal Judges and Magistrates, that on such accused persons being forwarded to the Criminal Court, they can be dealt with under the general provisions of the Regulations.—*C. O. 9th Oct.* 1841.

Under the Mahomedan Law, a servant is liable to "Tazeer by imprisonment and stripes, "in proportion to his offence" when convicted of breach of trust, and fraudulent misappropriation to his own use or purposes, of money committed by his employer to his charge; and cases of that nature should be disposed of under the general regulations.—*C. O. 1st Sept.* 1843.

If a prisoner be charged before a Criminal Court, with an offence for which the Regulations do not prescribe a specific penalty, or that the party be committed for trial by the Session Court, the Criminal Judge shall require the Mahomedan Law Officer of the Zillah Court to state in writing, whether the offence is punishable under the Mahomedan Law or not; and if punishable, how. If the answer be in the negative, the Criminal Judge shall immediately release the prisoner; if affirmative, he shall proceed to examine the witnesses against the prisoner; and if he see reason to believe him guilty, and consider the punishment which he is empowered to inflict by this Section, adequate to the offence, he shall proceed to hear the prisoner's defence, examine his witnesses, and determine the case himself; If he consider the punishment which he is authorised to inflict, inadequate, he shall commit the prisoner for trial before the Session Court. The answer of the Law Officer shall invariably be inserted in the Criminal Report, in the column punished, released or committed, as the case may be. Judges are at liberty to bring to the notice of the Foujdaree Udalut, through the Session Court, any particular offence which the Law Officer may declare "not punishable," and which shall to them appear sufficiently injurious to the community to require being exposed to punishment.—*C. O. 28th Jan.* 1828, *A.*

*Note*—The mode of obtaining the opinion of the Law Officer, would appear to be by transmitting a written Abstract of the case to the Session Judge, for the purpose of its being referred to that functionary.

It is left to the discretion of the Judge to punish theft by imprisonment alone, or by lashes alone; or by both, provided that the imprisonment do not exceed six months, or the lashes 150.—*C. O. 28th June*, 1828.

Though in this Section, and in others of the Regulations, the imprisonment is not specified to be with labour in irons, the Foujdaree Udalut have ruled so far back as the 3d June 1819, that a sentence of imprisonment must be wholly nugatory, unless accompanied with hard labour in irons; and that a sentence of imprisonment "without labour" must, when considered with reference to its general operation, eventually tend rather to the encouragement than suppression of offences. The Court at the same time observed, that

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cases might occur, in which, considering the rank or circumstances of the person convicted, imprisonment may be held to be a sufficient punishment.—*C. O.*, 31*st Aug.* 1833, *B.*

Criminal Judges shall not confine in irons, previous to conviction, any person who may be charged with a bailable offence. Persons committed for trial before the Session Court, shall not be confined in irons, unless from peculiar circumstances to be recorded in the diary, the use of irons may be considered necessary for their safe custody.

A prisoner convicted of a misdemeanour, shall not be confined in irons, nor shall irons be used in such cases, except in the event of special necessity arising out of the bad conduct of the prisoner during his imprisonment, or unless the insecurity of the jail or other place of confinement may render such restraint indispensable for security,—in which case the grounds for such proceeding must be recorded.—*C. O.* 27*th June*, 1831.

The Order of 27th June 1831 respecting the use of fetters, is not superseded by that of 31st August 1833, regarding labour accompanying imprisonment.—*C. O.* 28*th June*, 1834.

Sentences of corporal punishment shall be carried into effect, in conformity with the provisions of the general regulations, at such time as the Court by whom the sentence in each case is passed, shall think proper to determine.—*C O.* 6*th Jan.* 1847, *B.*

The Criminal Judge must not return a case to the Police or Magistracy, on the ground that it is one of which they are competent finally to dispose – it is his duty to enquire into the circumstances of the charge: and should it appear that the prisoners are liable to an inferior degree of punishment, pass sentence accordingly. The re-transmission of cases by a Criminal Court to the Magistracy or Police, is in no place permitted by the Regulations, and must tend in every instance to the obstruction of public justice, and the inconvenience and injury of individuals. At the same time, the Magistracy should guard against overloading the Criminal Courts with cases punishable by themselves, or the Police under them, and instances of the kind should invariably be brought by the Criminal Court to the notice of the Magistrate.—*C. O.* 31*st Dec.* 1828, *A.*

1. The Circular Order of the Foujdaree Udalut of the 11th September 1840, No. 124, directs that "in all cases of assault or wounding, whenever the fracture of a limb may be the result of such violence, the fact of so serious an injury having been inflicted, be considered a circumstance requiring the commitment of the accused to be tried before the Session Court."

2. Experience shows, that the Subordinate Judicial Officers in the Provinces have considered themselves bound by this order, to commit for trial before the Session Courts, all cases whatever of assault, in which a limb or joint has been fractured without reference to the discriminating circumstances of each case—and thus the time of the superior tribunals has been occupied in the investigation of charges, which might, with perfect propriety, have been disposed of by the lower Courts.

3. The Court of Foujdaree Udalut resolve, therefore, to revoke the said order—and direct that, in future, such cases be either disposed of by the lower tribunals themselves, or committed for trial before the Session Court, upon a consideration of all the circumstances, either of aggravation or extenuation, which may characterize each case, and in exercise of the discretion vested in the Provincial Officers by the provisions of Section XXXII, Regulation IX, and Section VII, Regulation X of 1816.—*C. O.* 1*st June*, 1847.

*Sec.* VIII.—It is competent to, and incumbent on, Criminal Judges to take cognizance of all offences committed by prisoners in the jails under their respective charge, which are cognizable by them under any regulation when brought before them by a Magistrate or Police Officer. The restriction in Section VIII, Regulation X of 1816, cannot be intended to apply to charges and information against persons already in the custody, and under the peculiar jurisdiction of the Criminal Judge.—*C. O.* 23*d June*, 1828.

This section precludes the Criminal Judge from placing at the bar as a prisoner, a party who may have been sent up to the Court as a witness, but who may be subsequently found to be implicated in the offence. In such cases communication should be made to the Magistrate, in order that the conduct of the Police may be noticed, and the individual should be remitted to him, in order that if there be proof forthcoming of his guilt, a charge may be regularly instituted against him.—*C. Os.* 28*th Oct.* 1822, *and* 18*th May* 1841.

But if in a matter before a Criminal Judge, there be sufficient evidence to implicate a person not apprehended, it is competent to the Criminal Judge to request the Magistrate, by letter, to issue his warrant to apprehend, and send the individual so implicated for trial before him; a refusal on the part of the Magistrate should form the subject of a reference to the Court of Foujdaree Udalut.—*C. O.* 10*th Aug.* 1833.

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When a party sent to a Criminal Court as a prisoner, may be acquitted, as not appearing implicated in the case, it is competent to the Criminal Judge to make use of such party as a witness, if it shall appear that he is able to give evidence against the other parties concerned in the charge then under his investigation. It is however not competent to a Criminal Judge to proceed criminally against a party sent up to him as a witness, but subsequently found to be implicated in the offence.—*C. O.* 18*th May*, 1841.

*Sec.* IX. *Cl.* 1.—Errors or defects in charges sent up by the Police officer, should be corrected by the Criminal Court—when apparent from the evidence taken by the Police.—*C. O.* 13*th Aug.* 1839.

The examination must be held by the Criminal Judge himself, the delegation of the duty here enjoined upon him, to any Native Officer, is wholly irregular and unauthorized, and has a manifest tendency to obstruct the administration of public justice.—*C. O.* 21*st October*, 1819.

It is illegal to admit any compromise in cases of a heinous nature, in which description are included all cases forwarded to a Criminal Court. If the complainant decline to prosecute, the Government Vakeel should be directed to conduct the prosecution.—*C. O.* 27*th August*, 1829.

The Criminal Judges may appoint a Vakeel of their Court to act as Government Vakeel, to conduct prosecutions delayed in consequence of the absence of the Government Vakeel.—*C. O.* 25*th June*, 1832.

Prisoners are to be brought before the Criminal Court as soon as they arrive, or within 12 hours afterwards, when any complaint they may make of maltreatment by the Police should be recorded; this will enable the Criminal Court instantly to obtain information, and communicate to the Magistracy any such complaint.—*C. O.* 27*th October*, 1830, *B.*

An individual against whom charges may be preferred, and sufficient evidence adduced, of the commission of two or more offences, one of which is cognizable only by the Session Court, cannot be tried for one offence by the Criminal Judge, and by the Session Court for the other or others; but he should be brought to trial before the same tribunal, upon the several charges preferred against him: because as a general rule, the Court of Foujdaree Udalut are disposed to consider a prisoner who may have committed several offences at different times, to be a fit object of commitment for trial before the Session Court, under the general provisions contained in the latter part of Clause 2, Sec. III, Reg. VI of 1822

If the prisoner be *fully convicted* before the Session Court of the graver charge, the sentence for the minor offences will merge in that for the *greater*; but in cases where adequate proof for conviction of the graver offence may not be adduced against a prisoner, but he shall appear to be under strong suspicion of the act charged against him, the Session Judge, in awarding punishment for the minor offences, will take into his consideration the degree of criminality which attaches to the prisoner in the case *cognizable only by the* Session Court.

In the event however of the prisoners being fully acquitted of the offence cognizable only by the Session Court, the minor charges, should they be attended with no circumstances of aggravation, may be referred back to the Criminal Judge for adjudication.—*C. O.* 5*th March*, 1841.

Nothing in this Section must be taken to debar the prisoner from the privilege of a defence and witnesses—in every case the course of proceeding in this respect should be adopted, which is laid down in the C. O. 28th January, 1828, A, noted under the preceding Section when speaking of cases punishable under the Mahomedan Law, &c.—*C. O.* 21*st May*, 1829, *B*, *and* 4*th May*, 1835.

And for the more effectual and careful performance of this duty, it is directed

1. That a prisoners defence before any Judicial, Magisterial, or Police functionary, be not recorded till the evidence for the prosecution has been gone through, when the presiding officer shall be careful to ascertain all that a prisoner may have to offer in his justification, or in extenuation of the charge.

2. That these authorities be instructed that it is their duty even where a confession is made, to call for, and take evidence on behalf of the prisoner whenever it may appear from his statement, that the witnesses named by him can depose to circumstances, that might in part exculpate him, or lessen the criminality of the offence.—*C. O.* 1*st August*, 1835.

In all cases of wounding whenever from the evidence and the circumstances of the

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case, there may appear grounds to charge the prisoner with "intent to kill" such intent should be invariably charged in the arraignment.—*C. O.* 28*th June*, 1837.

The Criminal Judge on committing a case should draw up the indictment in strict accordance with the evidence to be adduced on the trial. These charges are often framed in the most exaggerated terms, and it will occasion that functionary but little trouble after having gone through the evidence in the case, to trim the charge of its superfluities and to reduce it to what he may then consider to be a fair statement of the crime that the prisoner has committed, and which there appears a probability of establishing by the evidence to be submitted.—*C. O.* 10*th April*, 1833, *A.*

Whenever a prisoner committed by a Criminal Judge shall appear to have been convicted on any former occasion, he shall record in his proceedings, and the calendar, the nature of the offence, the date of the former trial, or trials, and the sentence, or sentences, which may have been passed on him.—*C. O.* 6*th Sept.* 1821, *A.*

In the event of re-cognizances being taken as prescribed in this Clause from a prosecutor or witness, and the party so bound failing to attend before the Session Court, the Session Judge shall, if good and sufficient reason be not assigned for the non-attendance, declare the amount of the re-cognizance forfeited to Government, as prescribed in the following Clause, and immediately issue instructions to the Criminal Judge to call upon the party for the payment thereof, and on non-compliance to commit him to close custody till such penalty be paid.—*C. O.* 21*st May*, 1817.

The Criminal Judge at his discretion may take personal re-cognizance, or demand security; and whenever he shall deem it expedient in consideration of the importance of any particular case, or for other good and sufficient reason to demand security from a prosecutor or witnesses, for their appearance before a Session Court, the Session Judge will proceed in the event of the non-attendance of any such person as prescribed in C. O. 21st May last; and in all other cases where mere personal re-cognizance shall have been taken, and the amount thereof shall be declared forfeited, and process be issued against the property of the re-cognizee.—*C. O.* 3*d October*, 1817, *B.*

*Sec.* X.—When prisoners fully confess their guilt before the Criminal Judge, or when their confessions before him do not materially differ from those made by them before the Police, the witnesses to the Talook confessions should not be required to attend the Session Court.—*C. O.* 12*th April*, 1819.

No distinction must be made in respect to taking the evidence for the prosecution, whether a prisoner plead guilty or not guilty.—*C. O.* 20*th Nov.* 1832.

In every case in which wounds or hurts may have been sustained, as soon as the parties who may have received them are brought before the Criminal Court, a correct record should be made of the nature and degree of the injury which they may then appear to have sustained. The Criminal Judge should record in the form of a certificate bearing his signature, that he had personally examined the wounds and hurts, and that it contains a correct description of what he thought of the wounds. In a case in which severe injury has been sustained, the Medical officer should be required to examine the wounded persons, and to furnish a certificate in his own handwriting and bearing his signature, descriptive of the extent to which he found the parties on examination to have been injured.—*C. O.* 10*th April*, 1833, *B.*

*Sec.* XI.—The practice of confining in fetters persons committed for trial to the Session Courts, who may be charged with offences not of a heinous nature, or who may be committed to prison from inability to find sufficient bail, is improper, as being unnecessary to secure their appearance at the time of trial, (the only object of personal custody in such cases,) and it being the evident intention of the Regulations that no prisoner, before he is brought to trial, should suffer more corporal restraint or personal ignominy than are unavoidable for his safe custody. No person should be confined in fetters before trial, who may be charged with a bailable offence, and committed to prison from inability to find bail; which in bailable cases should always be demanded previously to commitment; and under the provisions of this Section, it is manifestly competent to a Session Judge to direct the admission of bail in cases of every description wherein on report from the Criminal Judge or other satisfactory information before him, it may appear just and proper so to do.—*C. O.* 8*th Oct.* 1821, *A.*

*Sec.* XIV.—When the attendance of witnesses residing within the territories of foreign states, or foreign European settlements, is required in Criminal cases, the usual summons is to be sent by the Criminal Judge to the British Resident at the Native Court, or the Special Commissioner for Foreign Settlements, as the case may be, with a letter request-

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ing that he will obtain the necessary countersignature to give it effect within the foreign territory or settlement where the person summoned resides—and having caused it to be duly served according to the practice of the foreign territory or settlement, return it with an endorsement to that effect to the Judge who sent it.—*C. O. 23d Oct.* 1826.

*Sec.* XX.—The Court of Foujdaree Udalut, having remarked, that, in cases of robbery, the evidence is frequently defective with respect to the particular articles of property found upon individual prisoners, deem it proper to direct, that all articles of stolen property, which may be produced in a case before the Court of the Magistrate, or Criminal Judge, be numbered; that the witnesses by whom the property may have been discovered, be invariably examined as to the particular articles found on each individual prisoner; and that, throughout the examinations before the Magistrate, the Criminal Judge and the Session Court, the number of every article referred to be specified.

With the view of enabling the Court of Foujdaree Udalut to determine in all cases the degree of credit due to the testimony of prosecutors or witnesses, as to their recognition of prisoners, the Court direct, that whenever the deponent may identify a prisoner or prisoners on the trial, he be questioned as to whether, at what place, and at what period, he was acquainted with the person of the prisoner previously to the occurrence of the offence with which he may stand charged.—*C. O.* 16*th May*, 1822.

The Court of Foujdaree Udalut resolve, with reference to their Circular Order of the 16th May 1822, para. 1, to direct, that in examinations before the Criminal Courts, and the Session Courts, whenever an article of stolen property is referred to by the specification of its number, the nature of such article be also stated in the record; and that a list of stolen articles numbered, as labelled, or marked for identification, be appended to the proceedings of the Criminal Courts in all cases committed for trial, to which the said Circular Order of 16th May 1822 may be applicable.—*C. O.* 9*th April*, 1835.

In all cases in which, from the nature of the case, a measured ground plan of the premises would be calculated to give the Session Court, or Foujdaree Udalut, a more clear idea of the manner in which the crime was committed, the Criminal Judges shall take measures, in concert, when necessary, with the Magistrates, to obtain such plan to be laid with the case before the Session Court.—*C. O.* 5*th March*, 1824.

The Court direct, that the list of property, which in cases of theft or robbery may be alleged by the prosecutor to have been stolen or plundered from him, be in future drawn up in the following form:

| Articles stolen or plundered. | Value. | No. of articles recovered. | Value thereof. | On which prisoner found. | REMARKS. |
|---|---|---|---|---|---|
| | | | | | |

*C. O.* 27*th September*, 1824.

The Court of Foujdaree Udalut deeming it to be of importance, in order to a clear understanding of evidence in Criminal trials, touching the distance between places and measurement generally, that in the English translations of Criminal records, a note should always be inserted of such distance or measurement, in feet and inches, direct that this practice be observed in future, and also that whenever a native date is mentioned, a note be made of the corresponding English date.—*C. O.* 2*d Nov.* 1824.

*Sec.* XXI.—These *must* be submitted with the case to the Session Judge.—*C. O.* 30*th July*, 1817.

*Sec.* XXII.—Native Police Officers to whom a summons for parties witnesses, may be sent by the Courts, should in the event of their having gone to other jurisdictions communicate at once with the authorities thereof, instead of merely reporting to the Court that the required party or witness has gone to such other jurisdiction.—*C. O.* 16*th Nov.* 1835.

*Sec.* XXIV.—Whenever a petition may be presented to a Session Judge a formal and separate order should be passed thereon, and the petition not be returned to the party, but be numbered and filed among the records of the Session Courts.—*C. O.* 4*th Oct.* 1836.

*Sec.* XXXI.—And in cases of necessity, batta at the usual rate to prosecutors and witnesses during the whole period of their absence from their homes in attendance on the Criminal Court.—*C. O.* 23*d Aug.* 1824.

*Sec.* XXXIII.—The provisions of Section XXXIII, Regulation X of 1816, which restrict the grant of batta, to those prosecutors and witnesses before the Session Courts

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"who may appear to be *actually in need of such assistance*," and the order of Government circulated under date the 23d of August 1824, which authorizes the payment of batta to pros cutors and witnesses before the Criminal Courts in *cases of necessity*, are hereafter to be strictly observed. The batta which, under the enactment and orders above quoted, prosecutors and witnesses may be entitled to receive, shall invariably be paid to them in open Court, and in the presence of the European Officer; and the amount disbursed monthly in cases before the Criminal Courts, shall be entered in an abstract to accompany the Criminal reports.

When the amount of batta disbursed in one month, may exceed that disbursed in preceding months, to a degree for which the mere increase in the number of cases brought before the Court may alone not sufficiently account, a further and full explanation shall be submitted in a note at the foot of the abstract.—*C. O. 25th March*, 1835.

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# REGULATION XI, 1816.

*Sec.* III.—The advance or decline of the valuable system of Village Police, must depend for many years yet to come, upon the encouragement it receives from the local European Officers. It was formerly allowed to fall into disuse from not having been sufficiently appreciated, and it will go again to decay, unless every Magistrate in the country affords to it his countenance and cordial co-operation.—*C. O. 30th March*, 1833.

*Sec.* VI.—The Government have repeatedly recorded the importance they attach to the encouragement among the people generally, of a spirit of resistance to unlawful aggressions upon their persons and properties, especially in their proclamation of the 12th February 1833, as directed to be published in C. O. F. U. 22d February, and 18th March 1833. While the Foujdaree Udalut have been careful by explanations (C. O. 9th April 1834) to prevent the "*justifiable*" and meritorious homicide "committed in the vigorous execution of a duty," from being confounded with even the least culpable description of homicide by misadventure —Which and other orders on the same subject, will be found noted on Reg. I of 1818. In order further to encourage resistance to robbers, and courageous defence of property. "Magistrates are directed to make known to the people generally, that the Government will be prepared to take into consideration the cases of those families whose members may lose their lives in a manly resistance to unlawful aggressions upon their property."—*C. O. 9th August*, 1825.

Such cases are to be reported for the information and orders of Government through the Foujdaree Udalut, accompanied by a report of the particulars. And at the same time, the manner in which the liberality of Government can be most eligibly extended to the sufferers —"whether by pension, donation, &c." should be pointed out.—*C. O 9th Jan.* 1826.

*Sec.* X.—Under orders of Government, the Foujdaree Udalut direct—"that Heads of Villages take cognizance on the spot of every case within the limits assigned to their power by the Regulations; and that Tahsildars be prohibited from entertaining any complaint cognizable by a Head of Village, except during his stay at the Village in his tours of duty.—*C. O. 11th April*, 1831.

Several flagrant instances of oppression and cruelty on the part of the Village Police Officers, in confining for many successive hours in the stocks, persons suspected of theft with the view of extorting from them a confession of guilt, have recently attracted the serious attention of the Foujdaree Udalut.

The Magistrates of the several districts under this Presidency, are required to issue instructions to all the Village Police Officers subject to their respective controul, strictly prohibiting the placing of any person in the stocks on any pretence whatever, excepting only on sentence in cases in which that punishment is sanctioned by the Regulations.—*C. O. 29th April*, 1836, *A.*

*Sec.* XI.—Whenever a search is made in any house, there should be a list taken down, and attested by two unexceptionable persons on the spot, of the articles of property found in each house; the attesting witnesses should be present at the search and able to speak, of their own knowledge, to the correctness of the list.—*C. O. 15th Sept.* 1834.

The accused shall also be present, and their presence be certified in the list—and when this is not practicable, the circumstance of their absence at the time of search be likewise notified in the same list; and in order to prevent (what is supposed to be not unfrequently the case) the persons making the search, from secreting the property of the complainant in the houses, or on the premises, of the accused, they shall be themselves inspected previous to commencing the search; the fact to be certified in the list; and lastly, the Head of the Village in which the offence is charged to have been committed, or the Head of the neighbouring Village, if the accused reside there; shall be likewise required to attend during the search, and to affix his signature to the list, in corroboration of the correctness of the circumstances therein certified.—*C. O.* 29*th Jan.* 1840.

All articles of stolen property found upon individual prisoners, and produced before the Native Police, shall be invariably numbered by them; and in the examinations before the Native Officers of Police, the number of every article referred to be specified.—*C. O.* 14*th Sept.* 1840.

*Sec.* XIII.—The Court of Foujdaree Udalut direct the several Magistrates to instruct the Tahsildars, and through them the Heads of Villages, in all cases where the death of a person in custody may occur, to hold an inquest on the body, as prescribed in this Section; the record of which should in all cases be transmitted to the Magistrate, and where the Police proceedings may come before the Criminal Judge, should be furnished to that officer, to be included in the proceedings submitted by him to the Session Court.—*C. O.* 25*th March,* 1824.

The serious attention of the Court of Foujdaree Udalut has been attracted by the almost universal neglect of the important provisions contained in Sections XIII and XXXVI, Reg. XI of 1816, on the part of the Officers to whom by those Sections, and by Sec. III, Reg. IV of 1821, the duty of conducting inquests on the bodies of all persons supposed to have been murdered is assigned, and they deem it therefore incumbent upon them to call the particular attention of the Session Courts to this matter, and to direct that the several Magistrates be required to take measures to effect the due performance of the duty assigned to the Heads of Villages by Sec. XIII, Reg. XI of 1816.

With respect to the Heads of District Police, and the officers specially appointed under the provisions of Sec. III, Reg. IV of 1821, the Court of Foujdaree Udalut direct that they be distinctly warned that negligence on their part, of the duty prescribed by them, of holding inquests when practicable, will be visited with dismissal from office, under the provisions of Sec. III, Reg. XIII. of 1832.—*C. O.* 30*th Jan.* 1833.

The Court of Foujdaree Udalut regret to observe, that the provisions of the Law, regarding the immediate inquest to be held in cases of murder, are very generally neglected, and they deem the present to be a fit opportunity for directing, that the attention of the Officers of District and Village Police be particularly called to this subject by the Magistrates, whose duty it is to use every exertion for enforcing the observance of rules, so essential to the due investigation of cases of this most heinous crime.—*C. O.* 24*th March,* 1825.

*Sec.* XV.—Village Watchers must not be detached from their proper Police functions by order of a Tahsildar.—*C. O.* 24*th Jan.* 1822.

*Sec.* XXV.—The manifest object of this provision is to secure the Magistrate's immediate and correct acquaintance with all matters appertaining to the administration of Police, in the districts under their charge—a bare report of the occurrence of a robbery, or other offence, omitting all mention of the facts of the case, or the proceedings held, is obviously very far from answering these ends; much benefit has been found to result from requiring officers of Police to transmit to the Magistrate immediate notice, whenever any considerable property may have been lost, sending also by the earliest tappal a list of the property to be introduced into a proclamation, and fixed up at the Principal Stations in the Zillah within a short period after the robbery, and the Foujdaree Udalut therefore direct that Magistrates issue the necessary instructions for the adoption of this course.—*C. O.* 24*th Jan.* 1822.

*Sec.* XXVII.—It is illegal to issue Blank Warrants leaving a space for the name to be filled up after apprehension, or general warrants, directing the apprehension for a particular offence of persons to be pointed out, or named hereafter, by any specified individual. A Warrant for apprehension must not only specify the crime charged, but the name of the particular party, or parties accused thereof, and the Magistrates will enjoin upon their Native Subordinates a strict adherence to the provisions of the Regulations on that behalf enacted.—*C. O.* 13*th Feb.* 1840.

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The Foujdaree Udalut call attention to those humane provisions of the Regulations which have been enacted with a view to prevent the unnecessary privation of personal liberty. In respect of the heinous offences mentioned in this clause, the Tahsildar is required to make such enquiries as may be necessary to ascertain whether any credit be due to the accusation, and it is only where it shall appear to be worthy of credit, that he is required "to make every exertion to apprehend, &c."

It will be the duty of the Magistrates to take every opportunity of inculcating upon their Police officers the importance of attending to this branch of their duty, and to notice every occasion in which persons may be brought before them without proper enquiry as to the degree of credit due to the accusations against them—the several Criminal Judges are also instructed to communicate to the Magistrate through the Session Court, the circumstances of all cases wherein prisoners may be sent to them by Heads of District Police without any evidence of their guilt, or adequate enquiry by those officers, in order to ascertain whether credit was due to the charges preferred against them.—*C. Os.* 21*st May* 1833, *and* 4*th Sept.* 1824.

Officers of Police are required to make on all occasions an immediate record of complaints preferred before them, wherein should be entered the date of the charge, the particular circumstances of the offence, the time when, and the place where it is alleged to have been committed—the names of the accused, or suspected persons, when designated, and the number of persons stated to have been concerned. This record should always accompany the proceedings transmitted to the Magistrate or Criminal Judge, in addition to such depositions as may be taken subsequently to the apprehension of the accused.—*C. O.* 26*th July*, 1823.

*Clause* 2.—Prisoners when examined by Police officers, shall not be questioned respecting their having on former occasions been concerned in offences totally unconnected with the charge under investigation.—*C. O.* 30*th April*, 1824.

The Native Heads of District Police being empowered by the Regulations to issue Warrants and Summonses without reference to the Magistrate, the Right Honorable the Governor in Council sees no reason why in the case of Natives Officers and Soldiers, the warrants and summonses issued by them should be accompanied by a notification from the Magistrate to the Commanding Officer, and as this practice must necessarily cause delay and inconvenience, he is of opinion that it ought to be discontinued. Whenever the Head of District Police issues a summons for the appearance, or a warrant for the apprehension, of a Native Officer or Soldier, it should be accompanied by a notification from *himself*, to the Commanding Officer. The Magistrates will be instructed to issue orders to this effect to the Heads of the District Police under their authority respectively, and His Excellency the Commander-in-Chief will be requested to explain the same to the Army by a General Order referring to that bearing date the 7th August 1813.—*C. O.* 30*th Dec.* 1833, *B.*

The attention of the Judges of the Court of Foujdaree Udalut, having been lately attracted to a practice, which would appear to be extremely prevalent amongst the Native officers of Police, viz. the systematic entry of false dates in the documents recorded by them. They direct, that the several Magistrates do issue instructions to all Heads of Police, and to the Officers appointed under the provisions of Section III, Regulation IV of 1821, to insert the Native date, at the head of every declaration they may record, in words, as well as in numerals, and that this entry be made before the declaration itself is recorded.—*C. O.* 12*th July*, 1825, *A.*

A Tahsildar is competent after proceedings so held to discharge the accused from custody if it shall appear that there is no proof of his guilt The grounds of this proceeding should however be fully reported, and public notice given that complainants who may be dissatisfied with the discharge of the accused party by the Tahsildar, should appeal to the Magistrate.—*C. O.* 30*th Sept.* 1824.

Section XXVIII, Reg. IX, and Section XVI, Reg. X of 1816 prescribe, that all examinations and depositions taken before the Magistrates and the Criminal Judges respectively, shall be "taken and written in the language, in which the deponents may desire to have the same recorded."

The same rule ought to be observed by the Heads of District Police in taking down depositions generally; but more especially confessions, delivered before them by prisoners, as far as may be in their power; recording in any instance wherein there may be no person at hand capable of writing the language selected by the deponent, that such was the

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case; and c rtifying in all such cases, that the translation of the deposition has been carefully explained to the said deponent, previously to his fixing his mark or signature thereto.—*C. O. 26th Nov.* 1824.

The Regulations do not, neither has the Foujdaree Udalut at any time prescribed, that cases shall not under any circumstances be detained by the Police beyond forty-eight hours. All that is required by the law, or by the Foujdaree Udalut, is, that prisoners shall not be unnecessarily, and therefore improperly, detained in the Talook, and that the officers of Police shall be constrained to give that due attention to their Police duties, which is essentially necessary for the well-being of society, and called for as an act of justice towards persons accused.

The Court need not dwell upon the evils which must ensue, if cases are forwarded to the Criminal Court but half investigated. The omission to make ample enquiry on the spot, and to obtain at the time, the forthcoming proof of the commission of an offence, is, there can be no doubt, an evil of the greatest magnitude, and one, hardly ever admitting of remedy by ulterior proceedings. At the same time, the instances which are constantly brought under the notice of the Judges, of the protracted detention of prisoners by the Police, renders it incumbent on the Magistrate, and the controlling authorities, to exercise a vigilant superintendence in this respect, and at all times to require full and satisfactory explanation of every instance of unusual and unauthorized detention. If the grounds assigned by the officer of Police are satisfactory, no blame can be attached to him, he may often deserve commendation for the exercise of a sound discretion, and for his exertions to obtain the requisite evidence, and it is the duty of a Magistrate to see, that his Police officers understand, that the call made upon them for a full statement of the grounds upon which they have detained prisoners beyond the period allowed, is not a condemnation of their proceedings, nor will any censure follow, unless they have done so without sufficient cause.

These remarks are equally applicable to the case of references to the Magistrate. The Court of Foujdaree Udalut have at no time ruled, that such references are to be uniformly prohibited. On the contrary, they consider them in many instances to be necessary and highly desirable. In cases for example, where the Police officer may entertain doubts, whether a complaint before him, is not matter for Civil action rather than of Criminal prosecution, it is obviously his duty to seek the instructions of his superior, and to detain the parties accused till he receives them. But in cases of offences clearly and explicitly declared by law, to be cognizable by the Criminal Courts and the Session Courts, of which class are all heinous offences, the reference of them to the Magistrate is highly censurable. It evinces, either, that the Head of Police is ignorant of the most obvious rules enacted for his guidance, or, that he wilfully disregards them, and there can be no question, that both the officer making them, and the Magistrate who permits such references, need to be reminded of their duty, and that a perseverance in such conduct will necessarily call for the reprehension of the Superior Court.

It will be the duty of the Magistrate carefully to watch over the proceedings of his Police, taking the requisite notice of every case of neglect of duty on their part, in failing duly to forward prisoners to the Criminal Court; and requiring from them that strict and careful investigation of cases the instant they come before them, which may secure all evidence forthcoming, and allow of the prisoners being forwarded at an early date, with the necessary proof.—*C. O.* 28*th Nov.* 1834.

A statement in the following form is to be forwarded by the Police to the Criminal Court, in important cases where there are two or more prisoners:—

| Prisoner's Names. | Confessed or not. | Identified by | Articles in the houses or upon the persons of the prisoners found in the presence of | Evidence of other witnesses bearing upon each prisoner. | Original cause of their arrest. |
|---|---|---|---|---|---|
| A | Not. | 1st Witness. | No. 1, Knife, 3d Witness. | 1st, 2d, & 6th Witnesses. | Crimination by 2d prisoner |
| B | Confessed. | Prosecutor & 2d Witness. | No. 2, Cloth, 6th Witness. | 4th, 3d, & 7th Witnesses. | Identified by Prosecutor. |

*C. O. 9th July,* 1834.

*Clause* 3.—Magistrates are required carefully to instruct their immediate servants, and all others employed by them, and, generally, all persons within the limits of their juris-

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diction, to abstain from all acts of violence towards persons apprehended by them, or committed to their custody, on charges of a criminal nature.—*C. O. 27th May*, 1806.

Where an offender voluntarily makes any confession of the crime of which he is accused, before any officer of the Police, his declaration should be committed to writing in the presence of at least two credible witnesses, and who shall have been present during the whole period of the prisoner's examination, and not merely when the signature of the prisoner is affixed to the paper, as too frequently has been the case. The declaration should then be read over to the prisoner, and he should be required to state, whether such is his free and voluntary statement, and if he reply in the affirmative, his signature or mark should be affixed to the paper, and then attested by the witnesses. When brought before the Criminal Court, the prisoner's examination should be taken down on a paper separate from that containing his declaration made before the Police officers, with which they have too commonly been blended. The examination being completed by the Criminal Judge, the declaration forwarded by the Police officer should be read over to him, and he should be required to state whether it was freely and voluntarily made on his part; and in case of his pleading, that he was either compelled, by the violence offered to his person, to assent to the truth of the paper drawn up by the direction of the Police officer, or that he was inveigled to make such an admission on his part by the promise of pardon, held out to him on condition of his signing the paper, the Criminal Judge should require him to support this plea by evidence. With this requisition he may however be unable to comply, from the peculiar circumstances in which he is placed, surrounded by officers of Police, whom the prisoner, from not being previously acquainted with them, cannot name, and who, in cases, where any improper measures might be adopted, would not readily come forward in evidence against their immediate superiors. Considerations like these render it necessary that confessions, said to have been freely and voluntarily made before officers of Police, should be viewed with caution and hesitation, and that they should be supported by much circumstantial evidence, ere they be admitted to the conviction of the prisoner. The Magistrates are, accordingly, directed to issue particular orders on the subject to the head Native officers of Police, and to require them to impose no further restraint on the prisoners brought before them than is sufficient to secure their persons, and, when questioning them respecting the charge adduced against them, with the view of ascertaining its truth or falsehood, to leave them as much as possible unfettered both in mind and body.—*C. O. 27th Dec.* 1815.

An erroneous idea would appear to prevail among the Native officers of Police, that a confession is the strongest proof of guilt, and to this is to be attributed the custom which is known to prevail of obtaining confessions by false hopes and promises, or extorting them by the impression of fear. In many instances there has been reason to believe that confessions have been fabricated, and the practice of obtaining by the flattery of hope, of extorting by threats or ill-treatment, and of fabricating confessions, would seem to have increased till it has become general and systematic.

The Court are of opinion, that, by endeavouring to impress upon the minds of the Police officers that the confession of an accused person is a matter not of primary, but of subordinate consideration, one important step will be taken towards its eradication. The very arrangement of the several clauses of Section XXVII, Regulation XI of 1816, is confirmatory of this observation, and the Court accordingly direct, that the Magistrates of the several Zillahs do, with reference to the above remark, direct the attention of the Tahsildars within their respective jurisdictions to the provisions of the aforesaid Section. —*C. O. 18th June*, 1817.

The large proportion of convictions founded solely upon confessions, appears to the Court of Foujdaree Udalut to be attributable to the neglect of the District Police officers to obtain all procurable evidence, material to cases brought before them, as required by Clause second, Section XXVII, Regulation XI of 1816, and to the marked preference, given by those officers, to confessions over every other species of proof.—*C. O. 7th Sept.* 1820.

To the atrocious nature of the measures resorted to by Native officers of Police for the purpose of obtaining confessions from persons accused, the records of the Court of Foujdaree Udalut bear abundant testimony; and it is obvious that such proceedings might be greatly checked by attention, on the part of the Magistrates, to enforce the rules, which prohibit the detention of prisoners beyond forty-eight hours after their apprehension. Another important check to such practices consists in the uniform requisition of all the evidence which a case may admit of. The Court of Foujdaree Udalut in their Circular instructions to the several Magistrates, under date 18th June 1817, directed them to impress upon the minds of the Police officers the primary importance of an adherence to the provisions enacted for their guidance in this respect.—*C. O. 24th Jan.* 1822.

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Confessions should be thus attested:—

Before A. B., Head of Police, Magistrate, or Criminal Judge, declared by the prisoner C. D. taken down in writing by E. F.; and signed or marked by the prisoner in our presence on the ————— 18 — .

(Signed) G. H.
J. K.

*C. O.* 18*th Nov.* 1823.

The Governor in Council agrees with the Foujdaree Udalut, that Heads of Police should not be allowed to examine accused persons, who do not make voluntary declarations; because the practice, though it might often be attended with advantage, is liable to serious abuse. But the Governor in Council could not approve a rule which would require the Head of Police, after in the first place examining the complainant and witnesses in the presence of the prisoner, then, in all cases, to put to him the question, whether he did or did not commit the offence with which he is charged; and which would prohibit, in the event of his answering in the negative, the taking down of any thing more which he might have to say. No promise, no threat, no influence of any kind, should be employed to draw forth a confession, nor should it be permitted to the Heads of Police to endeavour, by a process of examination, to obtain from the prisoner an admission of guilt. But it does not appear what evil could result from taking down whatever account the prisoner might be ready, of his own free choice, to give relative to the matter of the charge. It must in many cases be impossible to know, without hearing at full length what the prisoner chooses to say, whether it amounts to a confession of the crime laid to his charge, or not. If it should not amount to a confession, it may still be useful in showing how important evidence may be obtained. For these reasons, the Governor in Council is of opinion, that the voluntary declarations of prisoners, when offered to authority competent to take their confessions, should always be received.—*C. O.* 4*th June*, 1825.

An uncorroborated confession before the Police, has been constantly declared by the Foujdaree Udalut to be of no weight; not even sufficient to warrant an order for the requisition of security; and it might at first seem, therefore, that the transmission of a prisoner to the Criminal Court on his confession alone, was useless, and virtually prohibited. But it must be borne in mind that although a Police officer may not be able, or may neglect, to discover corroborative evidence, a full examination of the prosecutor, with the matter in the confession, may furnish to the Criminal Judge, a clue to further evidence which may lead to conviction, or establish such strong suspicion, as to justify the requisition of security.

On these grounds, therefore, the Judges are of opinion, that whenever a prisoner confesses the commission of an offence, which is proved by the testimony of the prosecutor, or other evidence, to have been committed, he should be sent up to the Criminal Court. But that in cases, where there is nothing to show that the crime was committed, except the prisoner's statement of the fact in his confession, he ought not to be forwarded.—*C. O.* 9*th Feb.* 1835.

The several Police officers empowered to receive confessions, shall be instructed in all cases wherein there may be no special objection to the proceeding, to cause any free and voluntary confessions that may be delivered by prisoners, to be attested in the mode prescribed in Clause third, Section XXVII, Regulation XI of 1816, by the peons (or any two of them) whom it may be intended to send in charge of the parties to the Criminal Court, such peons being, in all practicable cases, different from those who arrested the prisoners originally.—*C. O.* 15*th Sept.* 1837.

With reference to a remark that "the Magistrates do not like their Police officers being called away from their Stations" to prove the confessions given by prisoners before them, the Court observe, that it is in the power of Magistrates to obviate this inconvenience, by issuing strict orders to the Heads of Police to be careful that such confessions are always attested by competent persons.—*C. O.* 3*d Sept.* 1839.

*Clause* 4.—Under instructions from the Honorable the Court of Directors, the Foujdaree Udalut resolve to prohibit the use, by Subordinate or other Police officers, of perforated logs of wood, substituted for iron hand-cuffs, which, it appears from the Court's records, have occasionally been employed to facilitate the restraint of parties under custody, and of prisoners on their way to the Criminal and Magisterial authorities.

In the event of iron hand-cuffs, made according to the European pattern, not being procurable within the jurisdiction of the several Magistrates, it will be the duty of those officers to indent in the usual course for such number as may appear to be required.—*C. O.* 23*d Sept.* 1844.

The Court of Foujdaree Udalut direct that the Heads of District Police be instructed in

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forwarding prisoners to the Criminal Judge, to specify the date of their leaving the Talook; such dates to be entered in the quarterly reports furnished by the Criminal Judges, under provision of Section XXXV, Regulation X of 1816, in addition to the dates of apprehension and of arrival at the Zillah station.—*C. O.* 22*d Dec.* 1823.

Heads of Police shall insert in the report prescribed by Clause fourth, Section XXVII, Regulation XI of 1816, an additional column shewing the day and hour of each prisoner's arrival before them, and of his being despatched to the Criminal Court; and furnish an explanation of the cause of any considerable lapse of time between the apprehension of a prisoner and his appearance before the Tahsildar.—*C. O.* 27*th March*, 1824.

As under existing rules, the record in Police proceedings generally exhibits only the *date* of the original charge, or information preferred against an accused party, it has been represented to the Court of Foujdaree Udalut, that judicial functionaries in the provinces are unable always to determine whether any unnecessary delay has taken place before the Police in their conduct of the preliminary enquiries.—The Court of Foujdaree Udalut accordingly resolve to direct that the several officers of Police shall add to the records of cases transmitted to the Magistracy, or to the Criminal Court, a statement of the *hour* at which the charge or information was preferred to them.—*C. O.* 9*th April*, 1846.

Whenever a case may be detained beyond the prescribed period, by the Police, in consequence of their doubts as to its transmission to the Criminal Court having occasioned reference to the Magistrate, a communication shall accompany the case, explaining that such has been the cause of the detention, and showing why the reference has been made.

A concise but distinct note of this explanation is always to be given in the Monthly Criminal Reports, to enable the Court of Foujdaree Udalut to form a correct judgment whether the proceedings of the lower tribunal have been correctly conducted in this particular.—*C. O.* 26*th Feb.* 1836.

Magistrates shall explain to their District Police officers, that in examining prosecutor and witnesses under this Section, it is not necessary to take down in detail, the several questions which may be put in the course of each separate examination; but that it will be sufficient to reduce the substance of any material information which may be obtained from each deponent, into the form of a Statement to be signed by the deponent, and attested by the signature of the Police officer.—And the foregoing may be considered applicable to the examination of prisoners, except that in cases wherein a prisoner may make a free and voluntary confession, the Police officer by whom the enquiry may be conducted, should be careful to reduce the declaration to writing in the words of the accused.—*C. O.* 3*d Dec.* 1818.

By this enactment, the Tahsildar is directed to act upon his own responsibility in sending cases to the Criminal Court, without reference to any other authority. The Tahsildar should understand that, after he has taken evidence sufficient to satisfy himself of the prisoner's guilt, notwithstanding other prisoners remain to be apprehended, or other witnesses to be examined, the prisoner of whose guilt he is satisfied, and the witnesses already examined, should be sent off at once to the Criminal Court, with a report stating that the others will be afterwards forwarded.

The Judges desire that this be once again brought to the notice of the several Magistrates, and trust that these remarks may have the effect of inducing Tahsildars to attend more strictly to their duty, but should the result prove otherwise, they desire the Magistrates will compel them to do so, and prevent them from making unnecessary reference to the Magistracy.—*C. O.* 21*st May*, 1829, *A.*

On receiving the copy of the report of the Head of Police, if it shall appear that the prisoner or prisoners have been subjected to a detention in custody longer than forty-eight hours, for which no satisfactory reason may be assigned, the Magistrate will notice the irregularity in such manner as the circumstances of the case may appear to him to require, furnishing the Criminal Judge with a memorandum, showing what he may have done on the occasion.

The Judges of the Session Courts upon examination of the reports furnished by the Criminal Judges, under the provisions of Section XXXV, Regulation X of 1816, will be careful to notice to the Magistrate any case, wherein it may appear that that officer has admitted as sufficient any reason for a prisoner's detention, which has been denounced by the Court of Foujdaree Udalut as inadmissible.—*C. O.* 13*th Sept.* 1824.

A practice appears to prevail among the Head officers of Police, of entering in their reports furnished to the Criminal Judge under the provisions of Clause fourth, Section XXVII, Regulation XI of 1816, false dates of the prisoners' apprehension. In one case it appears moreover that from 21st January, the date of the examination of the first three

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prisoners, they were detained until the 13th February, awaiting the appearance of the remaining prisoner.

From several trials referred to the Foujdaree Udalut, &c., it appears also delays of weeks, and even months, between the alleged date of the apprehension of prisoners, and their arrival at the Zillah station, are of common occurrence. The falsification of dates, indeed, puts it out of the power of the Court to ascertain to what precise extent the provision contained in Clause fourth, Section XXVII, Regulation XI of 1816, which declares that the detention of a prisoner shall in all possible cases be limited to forty-eight (48) hours, is ordinarily violated by Police officers. The Court of Foujdaree Udalut have, however, on former occasions, directed the Magistrates, to point out to those officers the inadequacy of the cause assigned in the above case, for detaining the prisoners already in custody, and while they deem it necessary on the present occasion to direct that Magistrates do warn the several District Police officers under their authority, of exemplary punishment on any future occasion, wherein it may be found that their reports have exhibited false dates of the apprehension of prisoners, the Court desire that the Magistrates will strenuously enjoin the observance of the above provision of the Regulations enacted for their guidance, apprizing them, that the reasons ordinarily assigned for the detention of persons in custody, such as the time occupied in search of stolen property, the illness of witnesses, or the non-apprehension of other suspected persons, will not be admitted as valid grounds for its infringement, but that on such occasions the prisoners should be forwarded with the evidence obtained, and the deficiencies supplied as soon as possible.—*C. O.* 24*th Jan.* 1822.

The Judges of the Foujdaree Udalut, observing that a date is sometimes assigned by the Police to the charges against the prisoners, subsequent to the date of their apprehension, desire that the date of the original charge or information preferred against the accused, which must in all cases precede the issue of process for their apprehension, may be always ascertained and recorded.

The Judges desire to apprize all Magistrates, of the great importance which they attach to accuracy in this part of the reports of Police officers, who appear frequently to substitute the date of the examination of the parties, after the apprehension of the accused, for that of the original information which led to the issue of process against them.—*C. O.* 20*th Feb.* 1823, *C.*

Erroneous entries of the dates of the apprehension of prisoners in Reports of Police officers having been accounted for by attributing it to a misconception of the orders on this subject, the Police officers having recorded the dates when the parties were brought before them for inquiry, instead of the dates when they were taken into custody.

The Court are deeply concerned to find, after their repeated instructions upon this subject, that a misconception so gross should be found on the part of any officer, considered capable of discharging the duties of Head of Police; and that a practice, which they have so constantly interdicted, should still exist in any degree whatever. False certificates of the date of apprehension are calculated in many respects to perplex and mislead the Judge, and to affect the issue of the trial; most particularly in reference to the time when the confession or other deposition of the prisoner may be given.

The Court cannot believe that false reports under this head can ever be made, but with design and evil intentions, for an observance of one part of the Regulations is calculated to prevent a misconception of another part, and if the rule prescribed in Section XXXVIII, Regulation IX of 1816, which directs subsistence money to be paid to prisoners, were adhered to, it is impossible that the date when such payments commenced should be mistaken.—*C. O.* 1*st March*, 1824.

The serious attention of the Court of Foujdaree Udalut has been attracted by the almost universal practice adopted by the Heads of District Police of entering in their reports transmitted to the Criminal Judge under the provisions of Clause fourth, Section XXVII, Regulation XI of 1816, the date of examinations, taken from prosecutors after the apprehension of the prisoners as the "date of charge," whereas it is the manifest intention of the Regulation, that this date should be that of the original information by the complainant.

The Court of Foujdaree Udalut observe also, that the officers of the Police, empowered to receive complaints of crimes, appear not to take such complaints down in writing at the time of their being preferred, as ought always to be done, and they direct that this be invariably done in future.

In estimating the credit due to the evidence of prosecutors, it is of the greatest importance that a record should be kept of their Statements, in the first instance, to the

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officers of Police; and the Court of Foujdaree Udalut direct that this part of the proceedings of the Police officer be in future always included among the papers transmitted with trials referred to them by the Session Courts.—*C. O. 29th April*, 1833.

Prisoners on being forwarded to the Criminal Courts on any criminal charge or information shall be invariably accompanied by a Memo., shewing the previous convictions (if any) by the Police, Magistracy or other authorities,—and their previous general character and conduct, (so far as it is currently known and estimated,) in order that, if necessary, the Criminal Court may call for evidence on these points.—*C. O. 30th March*, 1840.

*Sec.* XXX.—The Court of Foujdaree Udalut consider it proper to call the attention of the Magistrates to the mode of securing prisoners on apprehension, or rather during examination, which is generally effected by tying with cloths, ropes, or other thing that presents itself, in order that measures may be taken for preventing the infliction of pain and injury, on prisoners with the view or under the pretext, of ensuring their safe custody. Iron hand-cuffs should be substituted for ligatures which from inattention, or carelessness, may be so tightened, as to occasion torture, and permanent injury: and the officers of District Police should be strictly enjoined to subject prisoners under examination to no greater restraint, than may be absolutely necessary as a measure of precaution.—*C. O. 24th March*, 1825.

It is proved in this case by abundant evidence, that the deceased Pungah met his death from the atrocious cruelties exercised on his person by the 3d prisoner, late Peishkar, for the purpose of extorting a confession.

The Court of Foujdaree Udalut have adjudged the 10th prisoner, a Peon, who bound the deceased, and so took part in the execution of the Peishkar's orders, to receive 39 stripes, and to be imprisoned and kept to hard labour in irons for seven years, and they direct that proclamation of this sentence be made by the Magistrate, as a warning to Peons of Police, against carrying into execution illegal orders of the superior Police officers, for the maltreatment of prisoners, or for the performance of any acts contrary to law.—The Court direct, that it be notified in the proclamation, that but for the death of the late Peishkar, the principal offender in this case, he would have been unquestionably adjudged to suffer capital punishment by the Court of Foujdaree Udalut for this barbarous murder. Examples have not been wanting of the infliction of severe punishment on Police officers, convicted of treating prisoners with violence, for the purpose of extorting confessions.

As declared in the foregoing observations, the Court of Foujdaree Udalut would unquestionably have condemned the Peishkar to suffer death, had he lived to make that satisfaction to the laws, which he so atrociously outraged; it occurs on this occasion to the Court, that a proclamation of the result of a trial, which issued in the capital punishment of an officer, vested with the powers of a Head of District Police, for maltreating a prisoner in order to extort a confession, may be productive of advantage, generally; and they accordingly direct, that the several Magistrates do notify by a proclamation, to be carefully published in all parts of the Districts under their charge, in such manner, and at such times as may give to the proclamation the greatest notoriety, that on the 11th December 1820, Hussen Khan, Police Ameen of Attoor, in the Zillah of Salem, was convicted by the Court of Foujdaree Udalut, of having beaten and caused to be bound by the hands and feet, and in that condition to be cruelly maltreated, Moottan, a prisoner apprehended by him, on a charge of theft, in consequence of which ill-treatment, the said Moottan died, and that the aforesaid Hussen Khan was adjudged to suffer capital punishment, which sentence was duly carried into execution.—*C. O. 29th October*, 1824.

The Court adverting to the instances which have lately been brought to their notice, of the undue practices resorted to by officers of Police, for the purpose of obtaining confessions from accused persons, direct that the several Magistrates do pointedly call the attention of the Police officers under their authority to the provisions of Section XXX, Regulation XI of 1816, and use every exertion in their power to check practices so atrocious, and to bring the offenders to punishment.—*C. O. 29th April*, 1822.

If the injured party avail himself of the option of a criminal prosecution, the charge *must* in the first instance be preferred before a Magistrate, and can only come before the Criminal Judge when the measure of punishment, specified in the second clause of this Section, shall appear to the Magistrate to be insufficient, in which case the Criminal Judge is empowered to dispose of the case, under the provisions of Section VII, Regulation X of 1816, or commit the party for trial before the Session Court should he appear to be deserving severer punishment than the Criminal Judge is authorised to inflict.—*C. O. 6th April*, 1820.

*Sec.* XXXI.—Magistrates should apply to cases thus referred to them the principles laid

down in Section XIV, Regulation IX of 1816, and if on perusal of the depositions forwarded by the Tahsildar, it appear to the Magistrate that the accusation is groundless, he should direct the complaint to be dismissed, and the bail discharged.—The Foujdaree Udalut call attention, with a view to its being duly carried out, to this care of the legislature "to prevent the unnecessary deprivation of personal liberty.—*C. O. 4th Sept.* 1824.

*Sec.* XXXIII.—Heads of Police should be cautioned against summoning parties before them under this Section, unless they see reason to consider the complaint preferred to be well grounded.—*C O. 17th June*, 1830.

*Sec.* XXXIX.—As recommended by Foujdaree Udalut on application of Zemindar, the Governor in Council authorizes the Magistrate to appoint Sub-officers of Police, with the powers defined in Section III, Regulation IV of 1821, to be employed under the Zemindar to relieve him from the details of Police business, in his Zemindary. Of course such appointments will only be made on the application of the Zemindar. The Governor in Council will further be prepared to authorize the appointment of a Police Ameen in the Zemindary, if desired by the Zemindar, for his greater relief from the pressure of details, to act under his authority as Head of Police, with the superior powers described in Section XL, Regulation XI of 1816.

The Governor in Council approves of the suggestion of the Foujdaree Udalut in para. 5, and will be prepared to authorize a similar arrangement whenever it may be recommended by the Magistrate in Zemindaries, in which the chief Police authority is vested in the Zemindar, under Section XXXIX, Regulation XI of 1816.—*C. O. 26th May*, 1834.

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# REGULATION III, 1817.

*Sec.* II.—Private correspondence, or indeed correspondence by letter, on the part of the Judge or Magistrate, with one of two parties, between whom it is his duty to do impartial justice, is prohibited.—*C. O. 19th Nov.* 1832, *A.*

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# REGULATION I, 1818.

*Sec.* III, *Cl.* 4.—The wife and adulterer are not punishable criminally, where the husband has connived at the illicit intercourse. The prosecutor would not have grounds of complaint as an injured party, and it was not intended by the legislature that the offence should be prosecuted as an offence against the public—but the injured husband is competent to prosecute the adulterer, and also his wife.—*C. O. 28th Oct.* 1840.

*Sec.* IV, *Cl.* 1.—On 12th February 1833, Government, through the Foujdaree Udalut, directed proclamation to be made—exhorting the people to resist attacks on their persons and properties, to assist their neighbours in such emergencies, and to detect offenders, and assuring them of immunity from criminal prosecution in the event of their committing homicide in the vigorous execution of a duty which every man owes to the community of which he is a member.—*C. O. 27th Dec.* 1832, *and C. Os. 22d Feb. and 18th March*, 1833.

The immunity so promised should be conferred by the Magistrates abstaining from forwarding to the Criminal Court cases of this nature, but as the lives even of those who openly break the law ought not to fall a sacrifice to any but a legal sentence, except in actual defence of life or property, unless where Martial Law has been established.—The Foujdaree Udalut, to guard against all unjustifiable or avoidable homicide, are upon consideration, of opinion, that the judicial enquiry necessary to establish the exemption from trial of persons committing justifiable homicide under the proclamation in question, can be safely trusted only to the Magistrates and their European subordinates.—*C. O. 19th Feb.* 1834.

In the above order the Foujdaree Udalut having also remarked, that a charge of homicide once forwarded to the Criminal Courts, the Judges of those Courts possessed no authority to dismiss it, but must, upon being satisfied that such homicide was committed, commit the party accused for trial—thought fit to explain subsequently. That they did

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not contemplate any cases of *justifiable* homicide *reaching* the Criminal Courts—concluding that all such committed under the authority of the Government Proclamation of 12th February 1833, would be disposed of by the *European* Magistracy, so that all cases of homicide sent before the Criminal Courts would consist of murders, culpable homicide, or homicide by misadventure—and their orders stating that the Criminal Courts possessed no authority to dismiss even the lowest description of such cases, were expressly founded on Clause 2, Section XV, Regulation VII of 1802, and Clause 4, Section IV, Regulation I of 1818. In the event however of cases of justifiable homicide being improperly forwarded to the Criminal Courts, the Foujdaree Udalut are of opinion, that those tribunals ought upon proof that the act was justifiable, to release the accused, as in other cases where the act charged forms no crime in law.—Ordered, that the distinction thus drawn between *justifiable* homicide which is no crime—and upon which it is the proper duty of the European Magistracy alone to pronounce an opinion holding the party guiltless—and accidental homicide or homicide by misadventure, which is cognizable by the Session Court alone, be more prominently brought to the notice of the respective tribunals.—*C. O. 9th April*, 1834.

In regard to "homicide by misadventure" as above defined, the Foujdaree Udalut subsequently issued the following order:

In all cases of accidental homicide not coming within those defined in Clause 1, Sec. IV, Reg. I of 1818, which may in any way come under the cognizance of the Native officers of Police, it will be their duty to make the necessary investigation, and forward the party accused, with the witnesses, to the nearest European authority, whether the Magistracy, or the Criminal Court. It will then rest with the Criminal Judge, and the Magistracy respectively, to investigate the case; and to determine, whether the homicide was purely by misadventure, devoid of all criminality, or whether there was that want of due caution, or other circumstance existing, which would render it culpable, or of the description referred to in Clause first, Section IV, Regulation I of 1818. If the Magistracy shall be of opinion that the homicide was clearly unintentional, and that no blame attaches to the party accused, they will forthwith order his release, recording at length the grounds of the order. In all other cases, they will remit the party for trial before the superior tribunal.

The Criminal Courts will proceed in like manner, and either release or commit persons forwarded to them on charges of homicide, whether by the Police, or the Magistrate, as they may deem the act culpable or otherwise.

The Court also direct that the Magistrates do instruct all Native officers of Police, that parties before them on charges of homicide by misadventure in the prosecution of a lawful act, are not to be dealt with as prisoners, but are to be sent up to the Criminal Court, or the Magistrate, in the same mode as witnesses.

The Magistrates will also observe the same rule in forwarding cases to the Criminal Court, unless they shall see cause in special instances to take greater precaution for the appearance of the accused.

The Criminal Judge will in like manner take due care that the party is not placed in jail, nor subjected to any unnecessary restraint.

The Court of Foujdaree Udalut deem it right also to point out to the Criminal Courts, the expediency of calling upon the accused for moderate bail, "in all cases of illegal homicide not involving the crime of murder," which they may commit for trial before the Session Court.—*C. O. 3d July*, 1834.

## REGULATION IX, 1818.

*Sec.* II.—The Judges of the Court of Foujdaree Udalut observing that certain of the Zillah Magistrates construe the provisions contained in Regulatton IX of 1818, as sanctioning the entire delegation of the Police functions to the Assistant Magistrate, inform them, that in answer to a late reference to Government, the Honorable the Governor in Council has declared that proceeding to be directly at variance with the object of uniting the offices of Collector and Magistrate in the same person.—*C. O. 20th Aug.* 1821.

The Governor in Council concurs with the Foujdaree Udalut in the opinion that some

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restriction is necessary, with regard to the powers to be committed to Assistant Magistrates, whose youth, inexperience, and untried qualifications, may often render it proper not to entrust them with the full authority of their office. The Governor in Council has accordingly resolved, that no Assistant Collector and Magistrate who has not been employed at least for a twelve-month in the provinces, nor any who is not in charge of the Revenue management of at least one Talook, shall exercise the power of inflicting any punishment, by stripes, fine, or imprisonment, unless the sentence has previously been sanctioned by the Magistrate. It is moreover incumbent upon Magistrates at all times to exercise a sound discretion in delegating to their Assistants the whole or any part of their duty, under the provisions of Regulation IX of 1818.

The authority so to delegate their duty does not by any means absolve them from the responsibility of satisfying themselves that it is delegated into none but fit hands. It is proper, therefore, that the delegation should not be made, or having been made, that it should be recalled, whenever they have not reason to believe that the duty will be discharged with judgment, temper, and discretion. Above all, it is of essential importance that the Magistrate should not in practice divest himself of the duties of that office, whatever portion of them he may see fit to delegate to his Assistants; and should not, by such means, bring about the worst species of separation betwixt his Police and Revenue functions, but that he should actually exercise as well as hold, the joint office of Collector and Magistrate.—*C. O.* 30*th Jan.* 1824.

The Governor in Council thinks it proper that the Magistrates should be cautioned generally against delegating to their junior Assistants, the power of deciding in cases of importance, until they have acquired competent experience. During the first year of his employment, an Assistant, generally speaking, should be confined to the performance of business of detail, hearing petitions and complaints, taking examinations, &c. under the immediate direction and superintendence of the Magistrate, or any of the Subordinate European Officers, who may be vested with a separate charge, and should not be permitted to pass orders of his own authority.—*C. O.* 7*th June*, 1834, *A.*

## REGULATION II, 1819.

*Sec.* II, *Cl.* 1.—Instances having occurred in which Magistrates, in cases where it has happened that conviction was not procurable from a deficiency in the evidence, have detained the accused parties in confinement from an apprehension that their liberation would be attended with danger to the public tranquillity, the Governor in Council desires that this practice, which is at variance with the general regulations, be strictly prohibited in future, and that all such cases be brought to the special notice of Government, in order that if requisite, the provisions of Regulation II of 1819, may be put in operation.—*C. O.* 16*th Jan.* 1837.

## REGULATION III, 1819.

*Sec.* III.—Every complaint against the *Native* Police shall be invariably fully investigated by the *European* Magistracy.—*C. O.* 20*th March*, 1834, *A.*

## REGULATION IV, 1819.

*Sec.* III, *Cl.* 1.—The provisions of this law apply to the Native Police under the Commissariat in Cantonments, as much as to that under the Magistrate elsewhere.—*C. O.* 10*th March*, 1829.

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# REGULATION II, 1820.

The Admiralty jurisdiction of H. M. Supreme Court at Madras does not extend to any part of the navigable rivers or creeks of the sea in India, and the right criterion of the Admiralty jurisdiction is, the high water-mark of the sea shore, and the line drawn between the two seamost points of land at the mouth of rivers and creeks.

In cases of offences committed at sea, the nearest Justice of the Peace should be resorted to, on disembarkation, and he, or whatever Justice of Peace be referred to, must examine into the case in the same manner as he would into any offence committed on land by a person subject exclusively to the jurisdiction of the Supreme Court, and commit the offender (or bail him) to take trial there, at the next Sessions, and bind over the witnesses to attend and give evidence at such Sessions.—*C. O.* 31*st July*, 1834.

"In the cases to which the 53d Geo. 3d, Cap. 156, Sec. 105 applies, he has jurisdiction only on complaint of *Natives*. His jurisdiction beyond the limits of Madras is altogether confined to the acts and offences committed by *Europeans* or committed by other subjects of the Crown at sea."

"A Justice of the Peace acting beyond the limits of Madras, must proceed, as regards summary convictions, and generally in preservation of the peace, according to the course prescribed for Justices in England, as far as it is applicable in India. It is not easy to say in what cases the exercises of a Justice's jurisdiction is applicable in this country, or otherwise; and a Justice of the Peace has need of much caution and forbearance in the exercise of his powers—according to the nature of the case, the distance from the Presidency, &c."—*C. O.* 1*st Oct.* 1844.

*Note.*—Both these orders were circulated by the Foujdaree Udalut on the opinion of the Advocate General.

# REGULATION IV, 1821.

*Sec.* II.—In conformity with the orders of the Governor in Council, this Court proceed to define and declare by a conclusive determination, the powers and functions to be legally exercised by "Ameens of Police."

The misunderstanding on this subject has originated in some of the Magistrates and Subordinate Courts, in the interior, not having duly distinguished the "Ameens of Police" mentioned in Sections III and XL, Regulation XI of 1816, and Section II, Regulation IV of 1821, from the very distinct class of inferior Officers of Police, mentioned in Section III, Regulation IV of 1821, which last class it is now directed that they do invariably hereafter denominate "*Sub-Officers of District Police*," to prevent the inconvenience which has arisen from confounding these separate public authorities.

There does not appear to be any misunderstanding as to the powers possessed by the Tahsildars or "Heads of District Police," nor as to those to be exercised by the "Heads of Village Police" respectively.

The "Police Ameens," according to Section XL, Regulation XI of 1816, are intended to be appointed only "in large towns, where it may be found that the Police duties cannot be conducted by the Head inhabitant," and the Court are of opinion that their salaries should be fixed, with reference to the size and population of their jurisdiction, which is not now confined, as originally, to the local limits of the towns where they may be stationed, but at the discretion of each Magistrate, may under Clause first, Section II, Regulation IV of 1821, be extended beyond it "to any distance" he may deem fit.

In respect to the powers with which the Ameens of Police may be vested, Section XL, Regulation XI of 1816, further declares expressly that it rests at the discretion of the Magistrate to grant to each of them, "either the Police powers vested in heads of villages, or those vested in Tahsildars," *by Regulation* XI of 1816. They are to have either the one or the other as the Magistrate deems fit.

In either case, the Police Ameens are empowered to punish, without reference to any one, of their own authority, all "abusive language" and "inconsiderable assaults or affrays," and this is one of the great distinctions between them and the "Sub-Officers of

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District Police" hereafter mentioned. The extent of punishment they are empowered to inflict in such cases will depend, under Sections X and XXXIII, Regulation XI of 1816 respectively, upon whether the Magistrate may grant to them the powers of "Tahsildar,' or only that of the "Head of a Village," under that law.

In *other higher* offences if the Magistrate confine the Ameens of Police to the powers,' of the head of a village, their authority is defined from Sections V to XIII, Regulation XI of 1816, and they must in that case, like the heads of villages, act entirely in subservience to the Head of District Police, or Tahsildar. But if, on the contrary, the Magistrate grant to the Police Ameen the more extended power vested in a Tahsildar by that law, the Police Ameen, within his local jurisdiction, then becomes vested with all the powers of a Tahsildar, and able without the intervention of a Tahsildar, or any other authority, to send up cases direct to the Magistracy, or the Criminal Court respectively. It is this power of sending up cases *direct* to the higher tribunals, without going through the channel of the Head of District Police, which forms the second distinction between the Police Ameens, and the "Sub-Officers of District Police," as the Court now proceed to explain.

The "Sub-Officers of District Police," are not only distinguished from the Police Ameens by inability to inflict punishment of any kind whatever (Clause third, Section III, Regulation IV of 1821) and by a positive prohibition, against sending up cases direct to the higher tribunals (Clause second, Section III, Regulation IV of 1821), but are also not required to be stationed in towns. Section III, Regulation IV of 1821, in Clause first, requires that the Magistrates should select competent officers, out of their district establishments to perform, "*in different parts of each Talook*," the duties assigned to Tahsildars by Sections XXVII to XXIX, XXXI, XXXII, XXXVI and XXXVII of Regulation XI of 1816.

To relieve the Head of District Police from all unnecessary details, in all offences of a higher nature, punishable by the Magistracy, Criminal Courts, or superior tribunals, it is the object of this enactment to establish all over the country, at the chief station in every cluster of villages forming the respective sub-divisions of Talooks, and of course at the principal station of the Talook itself, some decent officer of a class greatly inferior to the Police Ameen, resident in towns alone; such as may, on the spot, make due search for stolen property, hold inquests, issue warrants, take all depositions of witnesses, and confessions or examinations of prisoners, and, in short, perform the whole of the Tahsildar's Police functions, in offences of this higher kind, with the single exception, that he is to forward the whole of every case, with the prisoners and witnesses, to the Head of District Police alone, under Clause second, Section III, Regulation IV of 1821.

The object of this last enactment is to maintain the unity of Police control, throughout each Talook, in the hands of its head alone; except where, in towns and their vicinity, it may be placed by the Magistrate in the hands of Police Ameens, acting immediately under himself, as already stated; with that single exception, it is the exclusive duty of the Head of District Police, to forward to the Criminal Court, and Magistracy, respectively, such of the cases received from his "Sub-Officers of District Police" as are complete; to amend, by further evidence, such as are defective; and to withhold cases forwarded to him on insufficient grounds.

Where this system is properly organized, and the "Sub-Officers of District Police" perform their duty properly, the Head of District Police, finding all the necessary depositions taken, has, in ordinary cases, nothing to do, but to prepare the prescribed report to the Criminal Court, or the usual urzee to the Magistrate. He is not himself to take any depositions anew, unless the investigation by his Subordinate has been defective or imperfect. In that case, he may take supplemental depositions from the persons sent in by his subordinate, forwarding to the higher tribunal all the depositions received from his subordinate, with any supplemental examinations taken by himself. But if any further testimony, which has not been sent in by his subordinate, is forthcoming, he ought, without detaining the case, to forward any new witnesses for examination direct to the tribunal to which it may have been transmitted, in order that they may examine these new witnesses themselves, without previous testimony in the Talook, which, in such cases, this Court deem unnecessary.—*C. O. 10th March*, 1834.

*Cl.* 2.—Ameens of Police, are subject to the general control of the Tahsildars of their respective Districts as Head Police Officers, not only in the Revenue but in Police matters.

"The Governor in Council is of opinion, that the salary of an Ameen of Police, with a jurisdiction extending beyond the limits of the town to which he is appointed, should not be less than 35 Rupees per mensem: where his jurisdiction is limited to the town, unless it is a very large and populous one, a salary of 30 Rupees may be sufficient.

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The Governor in Council is not prepared to authorize the appointment of the Talook Peshcars generally to be Ameens of Police, as is recommended by some of the Magistrates, but he thinks that where a Talook is extensive and does not lie compactly, such a measure will be expedient. When a Magistrate is of opinion that it is advisable that the Peshcar of a Talook should be vested with the powers of a Police Ameen in a particular division, he will recommend it through the Board of Revenue, stating his reasons and defining the jurisdiction which he proposes to assign to him, mentioning also the town at which he proposes that the Ameen shall be stationed, and the population thereof; when such an arrangement is sanctioned, it will be the duty of the Magistrate to report it, for the information of the Criminal Judge and the Session Court."—*C. O.* 10*th June,* 1834.

*Sec.* III.—The general provisions of the enactments of 1816 vest the Magistrates with a discretionary authority as to the distribution of the servants belonging to their establishments which is not affected by this enactment.—*C. O.* 15*th Aug.* 1822.

*Sec.* X.—The Court observe that although this Section relieves Heads of District Police from the necessity of recording depositions in cases in which it is competent to them to pass decision, yet it is obligatory on them, as well as on all other judicial functionaries to hear all the evidence that can be adduced, as well for the accused as the accuser, before proceeding to pass sentence.—*C. O.* 21*st Jan.* 1833, *B.*

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# REGULATION II, 1822.

*Sec.* II.—It appearing that the privilege allowed to prisoners of calling witnesses to attend on their behalf at their trial before the Session Court, is greatly abused, it appears to be necessary to call the attention of the Criminal Judges to the provisions of Section II, Regulation II of 1822, and to require that they be strictly observed.—*C. O.* 1*st June,* 1832.

*Cl.* 2.—The attention of Criminal Judges was specially called to these provisions by C. O. of the 1st June 1832, directing them to be strictly observed, but it was subsequently explained that

"The discretion given by Regulation II of 1822, to limit the number of witnesses for "the defence, was rendered necessary by the manner in which, either from ignorance or "design, persons committed for trial had abused the privilege of summoning witnesses "on their behalf, and the most general defence of an alibi can be as easily proved by two "as by twenty witnesses. The Criminal Judge previously had no option. He was bound "to cause the attendance, before the Session Court, of every person named by the pri- "soner, without knowing, and without having the means of knowing, whether their "evidence was, or could be, material to the prisoner. The discretion thus given to the "Criminal Judges was not, and could not be meant to deprive the prisoners of any just "means of defence; and if a prisoner were to name ten witnesses to a fact clearly mate- "rial to his defence, the Criminal Judge would improperly exercise the discretion vested "in him, were he to reduce the number summoned to two or three; for, although the ten "might not be necessary to prove the fact, the evidence of the two or three might from "various causes be insufficient to establish it. Independently of the general rule, that "the best and fullest evidence should be obtained in fact in every case, there would be "here a complete failure of justice."—*C. O.* 7*th Aug.* 1833.

The Foujdaree Udalut remarking that in certain Courts "if a prisoner name only one witness, that witness is not summoned, and even his name is sometimes not recorded, it being considered that two witnesses are indispensable," observe that nothing can be more improper or unjust than to deprive a prisoner of the benefit of any testimony that can be adduced in his behalf, and they desire that wherever the practice above described may have prevailed, instant orders may be issued for its abolition.—*C. O.* 4*th Oct.* 1833.

The Court of Foujdaree Udalut observe, that upon Courts questioning prisoners as prescribed by Clause second, Section II, Regulation II of 1822, as to the facts to be proved by the testimony of the witnesses whose attendance is desired by them, a usual answer given is, "I will prove by them that I did not commit this crime,"—the Foujdaree Udalut remark "That so general an answer is altogether beside the purpose, and that the provisions of this Clause evidently require that proof to specific facts should be required from the prisoner."—*C. O.* 12*th Feb.* 1836.

The Foujdaree Udalut call attention to the provisions of Section XIV, Regulation X of 1816, and explain that the discretion vested in the Criminal Courts by Regulation II of 1822, of limiting the number of witnesses for the defence, is confined to the rejection of testimony which may appear irrelevant to the prisoner's defence, and not meant to deprive a prisoner of any just means of defence.—*C. O.* 14*th Nov.* 1836.

*Sec.* III, *Cl.* 1.—A Magistrate cannot regularly commit any party to jail under the provisions of this Clause, without a personal examination of the case, and when testimony may be given regarding the mode of life, means, or general character, of the individuals herein described, such testimony should be on solemn affirmation.—*C. O.* 25*th Feb.* 1824.

This Warrant must specify all the particulars mentioned in Section VII, Regulation VI of 1827, and should be as nearly as possible in the form prescribed in Appendix 10 of Regulation XI of 1816, and be accompanied by the paper prescribed in Clause 2, Section XXXIV of that Regulation.—*C. O.* 22*d May*, 1828.

This Clause authorises the apprehension of such persons as therein described by Heads of Police, but not their committal to jail without personal examination and enquiry by the Magistrate.—*C. O.* 28*th Oct.* 1823, *A.*

Upon this and the following Section, it is held "that the detention by the Magistrate or Criminal Judge, of a prisoner ordered by the Session Court to be released without security, would be irregular and at variance with the principle of the provisions contained in Clause 2 of this Section, and in Clause 3 of the one following.—*C. O.* 19*th Nov.* 1822.

Whenever Magistrates send a party to the Criminal Court under the provisions of this Section, they must provide in their order for the release of the prisoner at the end of a definite period not exceeding twelve months excepting in the cases described in Clause 3, Section VIII, Regulation VI of 1827.—*C. O.* 5*th Aug.* 1831.

*Sec.* IV, *Cl.* 1.—The Foujdaree Udalut have formerly ruled, that in cases not punishable by himself, a Criminal Judge ought not to permit any cross interrogatories on the part of the accuser or the accused. But on re-consideration of the subject, with reference particularly to their Circular orders dated the 20th July 1829, and the 16th Nov. 1831, the object of which is to guard against the committal of accused parties on insufficient evidence, they are of opinion that it is necessary for this purpose that, in cases in which the parties accused are liable to be committed for trial before the Session Court, the officer conducting the preliminary inquiry should have authority at his discretion to permit them to cross-examine the witnesses for the prosecution.—*C. O.* 15*th Feb.* 1832.

This Clause provides that "in all cases brought before a Criminal Judge," he can exercise the power in question; and the Judges think that he is competent to exercise it in cases of every description, whether the original charge involves a crime punishable by himself, or only by the higher tribunals.—A prisoner should never be committed for trial, unless there are reasonable grounds to believe that the evidence forthcoming will be found sufficient for his conviction. A committal on insufficient evidence has the most mischievous public consequences. A criminal put thus on his trial is, necessarily, acquitted, and though the clearest evidence may afterwards be found against him, he cannot be tried again. When the evidence is not sufficient for conviction, but enough to raise strong suspicion only of the guilt of the accused, the proper course for the Committing Officer to pursue is to hold him to security, and to take the necessary steps for procuring additional evidence, which, if it is procurable at all, will generally be found, within the year. If it is not found within that time, it may afterwards be procurable, and then the accused may be again taken up.—*C. O.* 20*th July*, 1829, *C.*

It is the duty of the Criminal Judges, in cases referrible to the Session Court, to examine the case for the prosecution with care and minuteness; and if after such an examination he is clearly of opinion, that the evidence for the prosecution will not convict the prisoner, he ought not to commit him.—*C. O.* 16*th Nov.* 1831.

In all cases wherein the Criminal Judge may demand security under these provisions from persons suspected, but not convicted of any crime, the accused, if unable to give it on the spot, shall be allowed to name his bailers, after which a security bond shall be drawn up, having the name of the party, the crime he stands accused of, the amount of security required by the Criminal Judge, and the period for which it is to be held good, inserted therein. The Criminal Judge shall then forward this paper to the Magistrate, with a written request, "to cause the competency of the security to be ascertained by, and the bond, if the bailers are willing to undertake the responsibility to be executed before, the Head Police Officer of the District, and witnessed by the Head inhabitant and Curnum of the village, wherein they (the bailers) reside, and to return it to the Criminal Judge;" who will thereupon order the release of the individual or behalf of whom it has been taken.—*C. O.* 14*th March*, 1823.

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Inasmuch as the requisition of security is, in effect, a punishment; the Criminal Judges are enjoined strictly to observe in all cases where they may contemplate a requisition of security, the rules laid down for their guidance in C. O. F. U. 21st May 1829. They will accordingly, in every instance, call upon the accused, before they issue their order for the requisition of security, to state, whether he desires to have any witnesses examined on his behalf, and if he then name witnesses, and they shall appear to the officer presiding to be to facts material to his defence, two or more are to be summoned at the discretion of the Court, and duly examined before a final order is passed.—*C. O. 7th April*, 1835.

*Cl.* 3.—Under this Clause a Session Judge may require security from all prisoners who may appear to him to be under strong suspicion of guilt, whether such be the declaration of the Futwah or otherwise.—*C. O. 16th March*, 1825.

*Sec.* VI, *Cl.* 1.—Instances having recently occurred, in which persons charged with uttering base coin, escaped conviction from want of sufficient proof of the identity of the coin, the Judges of the Court of Foujdaree Udalut desire, that the particular attention of the Police be called to the great importance of securing proof of the identity of the piece or pieces tendered, on the trial before the Session Court, by sealing up or marking, it or them, in the presence of respectable persons, who may be able to prove the fact of its being the same as was produced before the Police.—*C. O. 11th Feb.* 1833.

## REGULATION VI, 1822.

*Sec.* II, *Cl.* 1.—Entry by a door left open is not a breaking, but removal of any fastening or latch, however slight, is. And every act which constitutes a breaking by night, must, in law, be deemed a breaking if committed by day—whether the offence was committed by day or night must, however, be specified in the abstract of charge.—*C. Os. 28th Jan. B.*, *28th Aug. and 29th Sept.* 1828.

*Cl.* 3.—These circumstances of aggravation are altogether of a more deep atrocity than those which, when accompanying the crime of robbery by open violence, require a sentence of transportation for life, under Clause 2, Section IV, Regulation XV of 1803, the intention of the legislature appearing to be that the same acts which in the perpetration of house breaking and theft without robbery by open violence, are punishable with 14 years' imprisonment, should, when committed in the perpetration of the latter offence, be punishable with transportation for life.—*C. O. 15th May*, 1832.

*Cl.* 6.—Imprisonment alone, or corporal punishment alone, or both, may be adjudged under this Clause.—*C. O. 28th June*, 1828.

*Sec.* III, *Cl.* 2.—On the principle laid down in Section XIX, Regulation I of 1802, "that one part of a Regulation is to be construed by another, so that the whole may stand," that part of this Clause which directs the committal of prisoners who from certain circumstances therein specified may appear deserving of severer punishment than the Criminal Court is authorised to inflict under the following Clauses of this Section, should be regarded as parenthetical; because with any other reading the concluding words of the Clause would declare the persons described to be liable to an enhancement of punishment, which is expressly prohibited by Clause 5, Section II of this Regulation.—*C. O. 19th June*, 1823.

This Clause after specifying certain circumstances of aggravation, on proof whereof the parties are required to be committed for trial before the Session Court, declares that the like proceeding shall be adopted by the Criminal Judge, if the prisoners, "from any peculiar circumstances of the case, may appear to him deserving of a severer punishment," than he is by the following Clauses authorised to inflict.

Under the general controuling power over the proceedings of the Criminal Judges, which is vested in the Session Judges, the Court of Foujdaree Udalut hold it to be unquestionably competent to them to over-rule the order of a Criminal Judge for the commitment of a prisoner to be tried by the superior Court grounded on his opinion that his own powers are inadequate to the due punishment of the offender; but the Court deem it proper to direct, that, whenever this authority may be exercised by the Session Court, the grounds for returning the case to be disposed of by the Criminal Judge, be entered at large (on the Calendar) for their information.—*C. O. 20th Feb.* 1823, *A.*

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To check an indiscreet exercise of the discretionary power, vested in the Criminal Judge by this Clause, of committing for trial before the Session Court, persons accused of theft, who from any "peculiar circumstances" may be considered deserving of a severer punishment than he is authorised to inflict, the Judges of the Court of Foujdaree Udalut desire that Criminal Judges, in such cases of commitment, invariably explain in their criminal report, why the powers of punishment vested in them by Clause fourth, Section III, Regulation VI of 1822, are deemed insufficient.

The object in view in enacting Regulation VI of 1822, was to relieve the Session Court by raising the jurisdiction of the Criminal Judge, and to obviate the inconveniences to which prosecutors and witnesses are exposed when compelled to give their attendance before the Session Court on the trial of offences which, from their character, do not demand severe punishment; but by an injudicious exercise of the power vested in the Criminal Judge by the "parenthetical" passage in this Clause, both objects of the enactment are frustrated, and the ends of criminal justice are thereby prevented from being promptly and effectually obtained.—*C. O.* 21*st May*, 1836.

"*Heinous* offence."—Thefts punishable under Section VII, Regulation X of 1816, do not fall within this denomination. Such thefts having been expressly declared to be offences not of a heinous nature in the preamble to Regulation IV of 1811.—*C. O.* 23*d Aug.* 1836.

*Cl.* 4.—All offences specified in this Clause were intended to be punished more severely than they would by Section VII, Regulation X of 1816.—*C. O.* 13*th May*, 1841.

Imprisonment alone—corporal punishment alone—or both together may be adjudged under this Clause.—*C. O.* 28*th June*, 1828.

Criminal Judges are directed whenever a prisoner committed by them for trial, shall appear to have been convicted on any former occasion, to record on their proceeding and in the Calendar—the nature of the offence, date of the former trial, or trials, and sentence or sentences, which may have been passed on the prisoner.—*C. O.* 6*th Sept.* 1821, *A.*

In all cases of theft, punished by Criminal Judges under the provisions of Clause fourth, Section III, Regulation VI of 1822, with imprisonment exceeding six months, they must invariably specify in the report, the particular circumstances of aggravation, which may have brought the case within those provisions.—*C. O.* 13*th Aug.* 1823.

*Sec.* IV, *Cl.* 2.—Parties accompanying robbers and waiting for the express purpose of receiving the stolen property, must, in the opinion of the Foujdaree Udalut, be regarded as accomplices in the robbery, and not merely as knowingly receiving stolen property.—*C. O.* 14*th Oct.* 1822.

This Clause applies to the offence of unlawfully and knowingly receiving or buying property stolen or plundered by Thuggee, knowing it to be such.—*C. O.* 30*th Nov.* 1840.

*Cl.* 4.—Imprisonment alone—corporal punishment alone—or both, may be adjudged under this Clause.—*C. O.* 28*th June*, 1828.

*Sec.* V, *Cl.* 2.—No committal to the Session Court can take place under this or the following Clause.—*C. O.* 4*th Feb.* 1835.

Imprisonment alone—corporal punishment alone—or both, may be adjudged under this Clause.—*C. O.* 28*th June*, 1828.

The punishment prescribed for escape, is to be adjudged in addition to any other punishment which a prisoner may be undergoing for a distinct offence, or to the imprisonment to which he may have been sentenced in default of security.—*C. O.* 13*th July*, 1829.

*Cl.* 3.—All persons in legal custody of any guard of whatever description, having lawful authority to detain them are punishable under this Clause for escaping from such custody.—*C. O.* 10*th April*, 1844.

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## REGULATION I, 1824.

*Sec.* II.—In each instance in which these provisions may in future be acted upon by the Criminal Courts, a note of the circumstance shall be entered at the foot of the case, in their monthly reports, explanatory of the amount and cause of the fine imposed.—*C. O.* 24*th Nov.* 1834.

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## REGULATION I, 1825.

*Sec.* III, *Cl.* 2.—A Session Judge purposing to recommend a mitigation of punishment under these provisions, shall merely intimate to the prisoner the penalty to which he has rendered himself liable, instructing the Criminal Judge at the same time to detain the prisoner in jail with hard labour in irons until the final orders of the Foujdaree Udalut shall be made known to him.—*C. O. 20th March*, 1834, *B.*

In cases where mitigation is sanctioned, the sentence shall be computed and held to take effect from the date of the original warrant of conviction.—*C. O. 8th Dec.* 1834.

This report and statement shall be included in the column of remarks in the Calendar, and no distinct letter or separate report need be furnished.—*C. O.* 18*th July*, 1834, *A.*

## REGULATION III, 1826.

*Sec.* II, *Cl.* 1.—Form of Indictment under this Section :—

"The prisoner A. B., appearing as prosecutor (or witness) in case No. —— before the Magistrate of ——— (or Criminal Judge of ———) wherein C. D. was charged with (here enter the substance of the charge); and being, on the —— day of ——— duly sworn (or having made a solemn affirmation) before the said Magistrate (or Criminal Judge) to depose truly to all matters of fact within his knowledge touching the said case, did wilfully and deliberately depose in words to the following effect (here enter the words contradicted by his subsequent deposition); and afterwards on the —— day of ——— being duly sworn (or having made a solemn affirmation) before the Criminal Judge (or the Session Court) in like manner to depose truly to all matters of fact within his knowledge touching the said charge against C. D., did wilfully and deliberately depose in words to the following effect, viz. (here enter the words in contradiction of the former deposition.) The said two depositions being in direct and positive contradiction one of the other, as to the matter (or matters) of fact so wilfully and deliberately deposed to on the two dates above specified, and one of the said depositions being therefore false and corrupt; and the said matter (or matters) of fact thus deposed to being material to the issue of the charge then pending against the said C. D., the said A. B. was guilty of wilful and corrupt perjury in one or the other of the said depositions.—*C. O.* 23*d Nov.* 1826.

## REGULATION II, 1827.

*Sec.* V, *Cl.* 1.—Regulation II of 1827, which confers upon Subordinate Collectors the new designation of "Joint Magistrate," whilst it grants to them in Clauses first and second, Section V, the powers of Magistrate in the portion of the district under their charge, or generally throughout the district, or specially any part of it, as may be delegated by the Principal Magistrate, expressly declares in Clause third, that the powers thus to be exercised by them in either case shall not supersede or exclude the authority of the Magistrate over the entire province, but shall be "subordinate thereto," so far as occasion may require.

Under this express enactment, it is perfectly competent to a Magistrate to interfere in any stage of a proceeding before his Subordinate, that he may deem proper, to stop his proceedings, call up the case before himself, or if the Subordinate has proceeded to judgment, to suspend its execution; and finally to modify or annul it as he may consider requisite. To give a contrary construction to the law, merely because it vests the Subordinate with full powers of the Magistracy, where the Principal does not interfere, or because the term Joint Magistrate is used, would be at variance with the rest of the Regulation, which is to vest full powers in the Joint Magistrate, always Subordinate to the Principal, as occasion may render his interference necessary.—*C. O. 8th April*, 1830.

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# REGULATION VI, 1827.

*Sec.* VI.—These particulars must be specified in a regular Warrant which should be prepared as nearly as possible in the form prescribed in Appendix 10, Regulation IX of 1816, and be accompanied by the paper prescribed in Section XXXIV of that Regulation. —*C. O.* 22*d May*, 1828.

It is clearly the intent of Regulation VI of 1827, that the term for which security, whether by personal recognizances, or by the responsibility of sureties, is to be given, and the term for which a prisoner may be detained in confinement in default of giving security, should be the same.—*C. Os.* 31*st Oct.* 1828, *and* 30*th April*, 1829.

Security can never be demanded from a prisoner convicted of a specific offence.—*C. O.* 19*th July*, 1827.

*Sec.* VII, *Cl.* 1.—In respect of Security Bonds in general, it is directed that where parties, for whom security has been given, may perpetrate offences within the period for which the sureties have made themselves responsible, that the penalty be invariably enforced.—*C. O.* 4*th May*, 1831.

*Sec.* VIII, *Cl.* 2.—Whenever a prisoner confined on a Magistrate's requisition of security be released by order of the Session Judge, a notification of such order shall be made to the Magistrate.—*C. O.* 28*th March*, 1831.

The Foujdaree Udalut desire that Session Judges strictly observe these provisions of the law. They deem it proper also to call the attention of subordinate authorities generally to C. O. 20th July 1829 (*under Section IV, Regulation II of* 1822) and to enforce on all officers empowered to demand security, the necessity of exercising a sound discretion in its requisition, that it be not demanded on slight grounds, nor in any case excessive in its amount. The Criminal Court should be further careful not to require it in cases where it may appear that evidence is forthcoming, sufficient to bring home the conviction of guilt, were the necessary exertions made—in such cases it will be their duty to endeavour to obtain the additional evidence; and if it is not eventually to be had, the period during which a prisoner has been in jail awaiting the completion of his trial, should be considered in fixing the term during which security is finally required.—*C. O.* 2*d Sept.* 1834.

*Cl.* 3.—There is nothing in this Regulation which renders a Magistrate competent to require security from persons released by Subordinate or Session Courts—after trial on a specific charge—without demand of security, if that demand be grounded on the same charge and evidence, under which they have been released by those tribunals. But if the Magistrate receive distinct charges against the released prisoner, or possess information against his general character, not before the Court which released him, he may on this separate evidence re-apprehend him and proceed respecting him as the Regulations provide.—*C. O.* 22*d Dec.* 1828.

*Sec.* X.—The period during which a prisoner may have been detained in confinement under a requisition of security, should, on such security being forthcoming, be deducted from the time for which it was demanded, in the sentence of the Session Court.—*C. O.* 7*th June*, 1834, *B.*

*Sec.* XIII.—On security being demanded from prisoners sentenced under the order of the Session Judge, or Foujdaree Udalut, to be confined in irons in default of producing security, they shall first be asked for a list of their sureties; and in the event of their furnishing the same, no prisoners shall be put into irons, until the competency or otherwise of the sureties tendered, be ascertained.

The Criminal Judges will understand, that this order is not to supersede the general authority vested in them of placing prisoners of known desperate character, in irons, in case of necessity; nor does it require, if the first securities named by the prisoner decline to become his sureties, or are not forthcoming, that the Criminal Judge should wait till the competency of a second set is ascertained, before irons are placed on a prisoner. In such cases the Criminal Judges will exercise their own discretion. The only object of this order, is to allow a prisoner in ordinary circumstances, ample time to find security, before he is subject to any restraint beyond that of simple confinement.—*C. O.* 26*th Nov.* 1834.

It is imperative on a Criminal Judge under this Section to subject all persons confined on a requisition of security, whether for good behaviour under Sections VIII, IX and X of this Regulation, or for appearance under Clause first, Section III, Regulation II of 1822, to compulsory labour; the kind and degree being alone left to the discretion of that officer.

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The Court of Foujdaree Udalut however exclude from the operation of this order the cases of persons held to security, wherein, from the situation in life of the party, or other causes, the Session Judge may consider the adjudication of labour improper, and the warrant issued to the Criminal Judge for their detention in default, may contain a specification to that effect.—*C. O.* 19*th Oct.* 1831.

*Cl.* 2.—A list of all persons confined in default of security to which they may have been held, specifying their names, place of abode, amount of security demanded, and term of imprisonment awarded in default thereof, shall be affixed by Criminal Judges in a conspicuous part of the Court House, and be renewed and corrected from time to time as occasion requires.—*C. O.* 12*th July*, 1830, *B.*

## REGULATION VIII, 1828.

Two cats-of-nine tails being furnished in the first instance to every public officer who has authority to use them, one of the two only shall be kept in use till it requires repair; when it shall be sent by Heads of Police to the Magistrate, and by Magistrates and Criminal Judges to such Depôt as shall be directed by Government, to have the necessary repairs executed, and be returned as soon as they are completed.—*C. O.* 31*st Dec.* 1828, *B.*

"As it would be contrary to Section V, Regulation VIII of 1828, to permit the lashes of cats-of-nine tails to be either made up or repaired in the Provinces, it will be necessary that they continue to be prepared and issued from the Military Stores as at present, and the Magistrates will be directed to transmit from time to time, to the Arsenal at Fort St. George, the handles of all the cats of which the lashes may be worn out."—*C. O.* 18*th April*, 1829.

Inconvenience and delay having been experienced under the operation of the orders, under date the 17th March last, whereby indents for the supply of cats-of-nine tails are required to be forwarded to the Military Board through the Court of Foujdaree Udalut; it is resolved that the Criminal Judges and Magistrates be authorized to transmit their indents for the supply of new cats, and to return old ones for repair to the Military Board direct, and that the Military Board be desired to comply with requisitions so forwarded. —*C. O.* 20*th July*, 1829, *A.*

## REGULATION II, 1829.

*Sec.* III.—Whenever charges may be preferred for crimes or misdemeanors, the Courts of Judicature must be careful to ascertain whether the crimes or misdemeanors so charged have been committed within or without the limits of the British provinces. In the latter case, it will not be competent to any of the Criminal Courts to take cognizance of such charges, except where they may be preferred against a Native subject of the British Government.—*C. O.* 12*th April*, 1817.

## REGULATION VI, 1829.

*Sec.* II, *Cl.* 1.—With respect to prosecutors, the Judges believe it to be very generally supposed that prosecutors are not competent witnesses. Now, in Criminal prosecutions, unless the injured or suffering party were admitted as a witness, few, and in some cases, none beside might have a knowledge of the fact, and crimes might pass unpunished. It has therefore long been a principle of English law that, even where the prosecutor may be entitled to a reward, on the conviction of the prisoner, his competency as a witness is un-

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questionable, and recent enactments extend this rule, by abolishing the exception formerly made against the evidence of the party whose hand is forged, to prove that fact, in cases of forgery. The Judges are of opinion that the same principle of the law of evidence extends to this country; and that in all criminal cases the prosecutor is to be considered a witness perfectly competent.

As to the credence due to the evidence of prosecutors, each case must be considered by itself. Experience induces the Judges to believe that, in this country, it would be unsafe, generally to found on it alone, uncorroborated by circumstantial evidence of some kind or other, the conviction of the accused. At the same time it seems sufficient for committal, and inquiry after such farther evidence, and where more than one prosecutor, perfectly unconnected with each other, whom there may be no reason to suspect of pre-concerted evidence, give clear and consistent testimony—the Judges will not take upon themselves to say that peculiar cases may not occur to justify conviction thereon—but when even a single prosecutor of good character, is corroborated by the immediate pursuit—accusation and arrest of the party—more especially by part of the stolen property being traced to the accused—ample circumstantial evidence may be elicited to his conviction, notwithstanding the prosecutor may be the sole eye witness of the crime.—*C. O.* 25*th Feb.* 1829.

It is the express object of the provisions of Clause first, Section II of this Regulation, that testimony by prosecutors should receive the weight to which, on the principles of the English law of evidence, it is entitled.—The Court of Foujdaree Udalut deem it proper therefore, with reference to Clause first, Section II, Regulation VI of 1829, and Section VIII, Regulation I of 1825, to direct that the Session Judges do require a second futwah, in all cases, in which material evidence given by prosecutors may be rejected in the original futwah, solely upon the general ground of the inadmissibility of a complainant's testimony, and to dispose of the case under such second futwah, delivered on the assumption that the prosecutor's evidence was admissible under the Mahomedan law.—*C. O.* 27*th July*, 1832.

In applying the provisions of this Section as well as those of Section VIII, Regulation I of 1825, the Law Officer should in the first instance deliver his futwah in strict accordance with the rules of evidence of the Mahomedan law, and the Session Judge thereupon proceed in the manner prescribed in Clauses three and four, Section II, Regulation XV of 1803, to take a second futwah, overruling any objections of the nature contemplated made in the first futwah.—*C. O.* 17*th Oct.* 1835.

## REGULATION I, 1830.

*Sec.* IV.—All Heads of Villages and Subordinate Police servants are to be warned that they are required, on pain of fine or dismissal, to make known immediately to the Head of Police, whenever they may be informed that a Suttee is intended; and the Court further direct, that the provisions of Clause second, Section IV, Regulation I of 1830, be generally proclaimed throughout the villages.—*C. O.* 24*th Feb.* 1832.

## REGULATION V, 1831.

*Sec.* I.—There does not appear to be any longer any objection to cases of breach of Salt and Tobacco laws being referred to the Sudder Ameens.—*C. O.* 13*th June*, 1844.

*Sec.* III, *Cl.* 6.—The question has been submitted to the Court of Foujdaree Udalut, whether the provisions of Clause sixth, Section III, Regulation V of 1831, are applicable to offences committed against the provisions of Section II, Regulation III of 1820.

The Court of Foujdaree Udalut think that they are not applicable, because the penalty for offences against Section II, Regulation III of 1820, is specific (viz. confiscation) and was not required to be sued for in the Civil Courts.—*C. O.* 6*th Jan.* 1841.

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# REGULATION VII, 1832.

*Sec.* XXXIX, *Cl.* 2.—The Court of Foujdaree Udalut under instructions received from Government, advise the several Judicial authorities, that although Clause second, Section XXXIX, Regulation VII of 1832 authorizes, within the limits of a Military Station, the *direct* service on the Troops, *by Civil Officers*, of notices, summonses, subpœnas or other process of mere citation, not involving personal arrest, yet it is desirable, in every practicable case, that such summonses, &c. should be executed through the Commanding Officer, or other *Military authority*.—*C. O.* 30*th April*, 1842, *A*.

# REGULATION IX, 1832.

*Sec.* II.—As to the course to be pursued by a Criminal Judge on the trial of a person sent up by a Police Officer under Regulation IX of 1832, for having preferred a wilfully false and malicious charge, the Foujdaree Udalut observes, that the use of the word conviction, in Section II of the Regulation, would seem to imply a full and regular trial, but the Court cannot conceive that this was the intention of the legislature. Under Section XXXV, Regulation IX of 1816, a Magistrate, when it shall appear to him, that any of the complaints specified in Sections XXXII and XXXIII are litigious, vexatious or groundless, is authorized to punish the complainant by fine or imprisonment under certain limitations and restrictions. It seems to have been considered that a similar power could not safely be entrusted to a Native Police Officer; and it was therefore provided that the power of punishment, in these cases, should be vested in the Criminal Judge; but it appears to the Court there is no obvious reason, why the infliction of punishment in one case should be preceded by more strict formalities than in the other. It seems to them, therefore, that nothing more was intended than that the Criminal Judge should, on a view of the evidence produced, in support of the charge preferred by the prisoner before the Police Officer, form his opinion of its falsehood and maliciousness, or otherwise, acting in this respect as a Magistrate would do, in the exercise of the powers vested in him by Section XXXV, Regulation IX of 1816. If, upon a view of the proceedings before the Police Officer, the Criminal Judge should consider that there are strong grounds to believe the accusation preferred by the prisoner to be wilfully false, and malicious, he will call upon the prisoner for his defence, and the prisoner will of course be at liberty to show, if he can, by evidence, that he had a probable cause for the accusation which he preferred to the Police Officer; and, if he succeeds in shewing that, he must of course be acquitted. If, on the other hand, the Criminal Judge, on a view of the evidence before the Police Officer, should be of opinion that there are no sufficient grounds for believing the charge preferred by the prisoner to be wilfully false and malicious, the charge against the prisoner must be at once dismissed.

A Criminal Judge, having before him the proceedings of the Police Officer on the charge preferred by the prisoner, considered that a re-examination of the case by himself was a necessary preliminary to his forming a judgement upon the charge preferred against the prisoner, and called upon the Magistrate to send up the case for that purpose. This the Magistrate very properly declined. It is impossible to suppose that the legislature could intend that the person originally accused should at all events be subjected to the inconveniences of a re-examination on charges which are on *prima facie* evidence presumed, and often must turn out, to be wilfully false and malicious. That would be to aggravate the evil which it was the intention of the Regulation to suppress.—*C. O.* 6*th Jan.* 1834.

The Court of Foujdaree Udalut observing that the provisions of Section II, Regulation IX of 1832, have been construed to authorize the punishment of *witnesses* who may have appeared in support of false charges preferred before the Native Officers of Police, direct, that it be notified to the Magistracy and Criminal Judges in the provinces, that Regulation IX of 1832, has been ruled not to apply to *witnesses* giving false evidence, but only to "the *party* by whom the charge shall have been *preferred*;" and that inasmuch as it was found requisite to enact a law for the punishment of persons preferring false complaints before a Police Officer, it cannot be considered legal to punish persons giving false evidence (not upon oath) before the Native Police, without a special provision, rendering the act a criminal offence.—*C. O.* 28*th Dec.* 1835.

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1. The question has been referred to the Court of Foujdaree Udalut, whether a false complaint preferred in the first instance before a Magistrate, but subsequently referred to a Police Officer for investigation, falls properly under Regulation IX of 1832.

2. The Court of Foujdaree Udalut are of opinion, that a person is liable to punishment under Regulation IX of 1832 (notwithstanding the complaint having been laid in the first instance before the Magistracy), if the complainant adhered to his accusation before the Tahsildar also, and spoke at all in support of it, and provided also the prosecutor (now prisoner) may not have been *sworn* to the charge in the first instance before the Magistracy; but his *complaint* referred for investigation by the Native Police under the provisions of Section XIV, Regulation IX of 1816.

3. But a prisoner having been apprehended and brought before the Magistrate under the provisions of Section XXIV, Regulation IX of 1816, that officer is bound to hold a personal investigation and the *irregular* reference of such case, to be disposed of by an officer of Police, will not render the prosecutor liable to punishment under Regulation IX of 1832, even though his complaint may be proved to have been false and malicious.—*C. O.* 17*th May*, 1841.

# REGULATION X, 1832.

*Sec.* VII.—The Court of Foujdaree Udalut having observed that that part of Section VII, Regulation X of 1832, which declares that the record of every summary conviction and punishment of refractory convicts, shall state the "*substance of the evidence*" has been occasionally lost sight of, and the Session Judge thereby precluded from performing the duty assigned to him by the latter part of the same Section, resolve to call the attention of officers in charge of convicts to the provision of the law above quoted; and to direct that in every such record there be entered a concise abstract of the evidence in support of the charge, as well as of any thing which the accused party may urge in his own behalf, and of any evidence he may adduce on his defence.—*C. O.* 29*th Dec.* 1837.

# REGULATION XIII, 1832.

*Sec.* V, *Cl.* 1.—It having been brought to the notice of the Foujdaree Udalut, that prisoners sentenced by the Heads of Police to imprisonment with labour under Clause first, Section V, Regulation XIII of 1832, are in certain Districts worked in "irons," the Court deem it proper to point out to the several Magistrates, that the proceeding is unauthorized, and that the practice must be at once discontinued.—*C. O.* 27*th Feb.* 1836, *B.*

*Sec.* X.—When any remuneration has been given for a courageous defence, or for any meritorious service in the apprehension of culprits, by the Magistrate or the Criminal Judge under Section X, Regulation XIII of 1832, the persons names and the amount paid should be entered in the Calendar, that the Session Court may judge whether those who have thus aided justice have been rewarded commensurately with their exertions, and the same should be proclaimed by the Magistrate in each Talook, to let the inhabitants see that when any emergent help has been afforded, it has not passed unretributed : at the same time, expectations for pecuniary recompense on all occasions, should not be too generously encouraged, by its being tendered to those who have only performed a duty they owe to the public, and whose assistance, "except when prohibited by rules of caste," (vide Sections VI and VII, Regulation XI of 1816) they can be compelled to render.—*C. O.* 7*th June*, 1834, *D.*

Applications having been received by the Foujdaree Udalut from Magistrates, for authority, under Section X, Regulation XIII of 1832, to reward by money payments, individuals who have offered effective and courageous assistance to attacks of gang robbers, which has led to the repulse, although not the actual apprehension of the assailants, the Court resolve to notify by a Circular Order their opinion, that under a liberal construction of the provisions of the Code which regulate the disbursement of remuneration for meri-

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torious assistance rendered to the Police, it is competent to Magistrates on their own responsibility, on occasions of the nature referred to, (the necessary conditions having been fulfilled) at once to disburse, without communication with the Foujdaree Udalut, such sums, within the limits specified in Section XXIII, Regulation IX of 1816, as they may consider the parties who have so distinguished themselves, to deserve.—*C. O.* 22*d Sept.* 1843.

*Sec.* XI.—Connivance on such occasions can be proved only by circumstantial evidence. If it be proved that the guards have been bribed, or tampered with; that the escape occurred in the open day, without their resistance, or that the usual precautions for securing the prisoner were purposely omitted, connivance may be clearly inferrible, and the guards punishable accordingly.—*C. O.* 13*th July*, 1829.

By Clause first, Section XI, Regulation XIII of 1832, it is declared that the Criminal Judge shall have primary cognizance of cases of "gross and culpable neglect" on the part of *Peons* in charge of prisoners, whereby they may be enabled to effect their escape, and they are punishable by imprisonment not exceeding six months.

The power here given is not restricted to any particular class of Peons, but is general, extending to all persons coming under that denomination, and the Judges are accordingly of opinion, that for such offence, Police and other Peons under the Magistrate, are liable to punishment under the Clause in question.—*C. O.* 20*th Feb.* 1835.

The jurisdiction and punishments prescribed by Section XI, Regulation XIII of 1832, are applicable only to Peons properly so called.—*C. O.* 10*th April*, 1844.

*Sec.* XII.—With reference to this Section, the Court of Foujdaree Udalut direct that, whenever an offer of pardon may be authorized under its provisions, the forms prescribed in their Circular Order of the 3d April 1828, shall be modified by omitting the words "in the name of the Governor in Council, and by authority received from him," and substituting in lieu thereof the words, "by authority received from the Court of Foujdaree Udalut."—*C. O.* 26*th Dec.* 1832.

## ACT XXX, 1836.

The Court of Foujdaree Udalut direct, that in cases of murder by Thuggee committed for trial before the Session Court, whenever sufficient grounds exist, there be, independent of the charge for murder, a separate count charging the prisoner or prisoners with the distinct offence described in Act No. XXX of 1836.—*C. O.* 25*th Nov.* 1837.

A transcript, or, if in any native languages, a translation, of the promise made to each Thug Approver, under the instructions of the Governor General in Council circulated on the 12th August 1837, shall be entered on the record of all trials of such approvers for the offence provided for by the Act No. XXX of 1836.—*C. O.* 12*th Nov.* 1839.

The meaning of Act XXX of 1836 appearing to be that only an initiated Thug can belong to a gang of Thugs, and the Foujdaree Udalut being requested to state what would constitute initiation according to law, if it be not proved by accompanying the gang on expeditions, observe that to render a party amenable to punishment under Act XXX of 1836, it is essential that the person accused should be proved to have belonged to a gang of Thugs, at an age when the Act can be considered voluntary on his part, and when he is capable of understanding what the object of the gang is; but this liability cannot be considered to extend to infant children, and to others who were not themselves members of the gang, and who had no participation in the acts committed, and were not in any way aiding and abetting in the commission of the crime of Thuggee.

The Court are of opinion that "initiation," technically so called, is not at all necessary to constitute the offence described in the Act in question.—*C. O.* 15*th Aug.* 1840.

## ACT XXXIII, 1840.

All writs, warrants, or other process mentioned in Section I, Act XXXIII of 1840, requiring to be executed within the limits of the Supreme Court, shall be sent, together

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with the prescribed copy and translation thereof, to the Sheriff of Madras by Tappal, except when they require the seizure of any person, when they should be sent by the peon, or other person, who is to receive charge of the party mentioned in the warrant, &c. when he has been seized; and such peon is to remain with the original warrant, in attendance on the Sheriff, or where the Sheriff may direct, until the party to be seized has been placed in his charge.—*C. O.* 14*th June*, 1841.

# ACT V, 1843.

The sale of a child by its parent is not punishable when committed in a season of famine, at all other times it is punishable by tazeer.—*C. O.* 17*th Sept.* 1839.

The removal of a free person, from one part of India to another, to be dealt with there as a slave without reference to any *traffic by sea*, is an offence not cognizable by the Supreme Court, but by the established criminal tribunals in the interior. Persons accused of such a crime should accordingly be committed for trial before the Session Court.—*C. O.* 30*th April*, 1830.

With reference to the C. O. of the 30th ultimo, the Judges of the Foujdaree Udalut transmit copy of a letter from the Secretary to Government in the Judicial Department at Fort William, enclosing a copy of the Resolutions of the Supreme Government on the subject dated on the 9th Sept. 1817, by which it will be observed that the construction put by them on the provisions of the Statute of the 51st Geo. 3, Cap. 23, confined its application to the traffic in slaves by sea.—*C. O.* 20*th May*, 1830.

# ACT VII, 1843.

*Sec.* XXIX.—The course of proceeding contemplated in this Section the Court believe to be the following:

As early as possible after the Record of a criminal case arrives from an officer of the Magistracy or Police, the Committing Officer should make himself acquainted with its contents. This proceeding will enable him to judge whether, if the informations are verified by the witnesses, the evidence will be sufficient for commitment; and, in the event of further information appearing necessary, he will be enabled to frame questions calculated to elicit it.

It is not contemplated by the Act that the witnesses should be examined over again by the Committing Officer, as to points which they have already deposed to; but only, additional questions asked, if necessary. Nevertheless, the authority so to examine witnesses over again, before their informations are read over to them, is not taken away; and where there is reason to suspect the truth of the first informations, it may be of great use to do so; but ordinarily it is not the course intended by the Act; and to follow it is to perpetuate one of the evils of the old system which the Act was intended to correct—the repeated examination of the same witness upon the same points. It is a great object that criminal records should not be unnecessarily long; and whatever swells the record without throwing new light upon the case, ought to be avoided.

It is in no case competent to the Committing Officer to examine witnesses for a prisoner, or in any way to question a prisoner with a view to his defence: Section II, Regulation XIII of 1832, the only enactment which gave him authority to examine witnesses for a prisoner, being expressly rescinded by Section XXVIII, Act VII of 1843.—*C. O. No.* 159, 25*th June*, 1844.

The Court of Foujdaree Udalut are of opinion that nothing contained in Act VII of 1843 can be held to prohibit a question being put to a committed prisoner by the Committing Officer, with a view to ascertain the names and residence of the parties whom he may wish to cite as his witnesses for his defence before the Session Court, which information when followed up, as it should be, by the issue of a summons, is calculated to expedite a decision of the case, and in such respect to further the main object of the Act,

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though it should not be permitted to bind the prisoner to the adoption of any particular line of defence, or to preclude his naming other witnesses when on his trial, should he wish to do so, on points relevant to the defence.

The Court of Foujdaree Udalut also resolve to circulate their reply to a reference from a Subordinate Judge as to whether, adverting to Circular Order No. 159, a Subordinate Judge in committable cases is precluded from examining a prisoner.

"The Judges of the Foujdaree Udalut think that neither the Regulations, nor the Circular Orders of the Court, ever intended that the Criminal Judge should be debarred that communication with a prisoner which is essential to his obtaining justice, and making his defence before the authority who decides the case; but they observe that the Committing authority has no right to take the defence of a prisoner, although it is his duty to see that nothing takes place before the Criminal Court capable of obstructing his defence.—*C. O. No.* 181, 30*th April*, 1846.

*Sec.* XXX.—Whenever a prisoner or prisoners committed for trial before the Session Court by a Subordinate Criminal Judge, shall be brought before the same individual, in the novel capacity of Session Judge, the Foujdaree Udalut direct that he do call before him in open Court, and ascertain from them by personal enquiry, whether or not, all or any of them are willing to be tried by him: and in the event of any prisoner's declining so to be tried, the Session Judge report the circumstance to the Foujdaree Udalut for their instructions.—*C. O.* 21*st Aug.* 1833.

*Sec.* XXXII.—Every individual so employed as an assessor or juror shall at the close of the proceedings be requested to declare a verdict in respect of each prisoner, which after being reduced to writing and read over to the party, shall receive his signature in token of its correctness, and be deposited with the record of the trial.—*C. O.* 26*th Feb. and* 4*th Nov.* 1845.

*Sec.* XLIX.—On visiting the gaols, the Session Judge should call separately before him the prisoners held to security and confined for default in giving it; and on any of them verbally stating their desire to petition, the Criminal Judge should be instructed to furnish a proper person to draw out their statement in writing, without which the present law prevents the Session Judge from interfering.—*C. O.* 20*th July*, 1829, *B*.

*Sec.* LIV.—Magistrates now possess the same powers as the Criminal Judges in regard to the demand of security from parties against whom an offence may not be clearly established, and they are justified in acting under Clause 1, Sec. IV, Reg. II of 1822, within the limits prescribed by this Section.—*C. O. No.* 173, 23*d July*, 1845.

"In regard to the degree of control and supervision which Magistrates are competent to exercise over the proceedings of subordinate Magistrates held under this Section, the Foujdaree Udalut are of opinion, on reference to the provisions of Regulation II of 1827, which are explanatory of the powers of a Sub-Collector in his Magisterial capacity, and which a fortiori are applicable to those of Assistant Magistrates, that it has been the intention of the legislature to constitute in each District one paramount Magistrate."

"They think therefore, that at the present time, a Magistrate possesses all the power of control over the proceedings of his Assistants which are enumerated in Circular Order dated 8th April 1830, but they also think that great discretion should be observed in the exercise of that power."

They also resolve to circulate their opinion, that it is the duty of Magistrates, previous to submitting the monthly report of cases decided by their Subordinates under Section LIV, Act VII of 1843, to require the amendment of the report of sentences passed, whenever they may be considered by the Magistrate contrary to law, or objectionable, as not affording the information necessary for a proper and complete understanding of the grounds on which the cases have been disposed of.—*C. O. No.* 179, 17*th Dec.* 1845.

1. The attention of the Court of Foujdaree Udalut has been attracted to that construction of the existing Regulations, under which it has been held that theft committed by a servant, however trifling the value of the property stolen may be, and however devoid of circumstances of aggravation the particular act, cannot be punished by the Magistracy, but must necessarily be brought under the cognizance of the Criminal Courts.

2. The Foujdaree Udalut, as at present composed, hold this construction to be erroneous, for the following reasons:

3. The preamble of Regulation VI of 1822, clearly shews why that Regulation for extending the powers of the Criminal Judges in certain cases was enacted. Before that law was passed, cases of theft attended with aggravating circumstances were obliged to be committed for trial before the Court of Circuit, as the Criminal Judges could only punish

such offences with six months imprisonment and one-hundred and fifty lashes. Regulation VI of 1822 supplied this defect, and the powers of punishment vested in the Criminal Judges were by that Regulation extended to imprisonment with hard labour for a period not exceeding two years, and to corporal punishment not exceeding one-hundred and fifty lashes of a cat-of-nine tails.

4. Clause fourth, Section III, Regulation VI of 1822, declared that among other circumstances of aggravation which should render the convicted parties liable to the enhanced punishment above mentioned, one was, "if the prisoner be a servant of the person from whom the property may have been stolen, or a servant employed in the house in which the theft may have been committed"—and hence it was inferred that in the case of persons standing in that predicament, Criminal Judges had no discretion, but must needs sentence them, on conviction, to the full punishment indicated in the provision above cited: but this misconception was corrected by Section III, Regulation VI of 1827, which, "in explanation of Clause fourth, Section III, Regulation VI of 1822," declared "that nothing contained therein shall be construed to require that persons convicted before the Criminal Judge of any of the offences specified in that Clause, shall in all cases be sentenced to a severer punishment than he is empowered to inflict under Section VII, Regulation X of 1816"—"but in all cases of conviction before the Criminal Judge of any of the offences specified in that Clause, he shall be competent to use his discretion in sentencing the offender to any punishment which he may think proper, provided that the punishment shall, in no case, exceed imprisonment with hard labour for the term of two years, and one-hundred and fifty lashes of a cat-of-nine tails."

5. Thus—with reference to this declaratory enactment, it was no longer compulsory upon the Criminal Judges to sentence to the full extent of the punishment indicated in Regulation VI of 1822, but cases of theft, notwithstanding they were perpetrated by the particular class of persons mentioned in Clause fourth, Section III, Regulation VI of 1822, were declared to be, as they now are, punishable at the discretion of the Criminal Judge either under Regulation X of 1816, or Regulation VI of 1822.

6. By Section LIV, Act VII of 1843, Magistrates are authorized to exercise the powers vested in Criminal Judges by Section VII, Regulation X of 1816, concurrently with the Subordinate Criminal Courts; and, therefore, on a charge of theft being brought before them, even though the accused belong to the class of persons above mentioned, if they think that the ends of justice will be met by a sentence of six months imprisonment and one-hundred and fifty lashes, they can act under the above law, and it is only in cases in which they may deem that punishment insufficient, that they must commit the offender for trial before the Criminal Court.

7. The Court of Foujdaree Udalut resolve to communicate this construction of the law to the Magistrates and Criminal Courts in this Presidency for their information and guidance.—*C. O.* 23*d Dec.* 1847, *No.* 189.

1. The attention of the Foujdaree Udalut has been attracted to the "Interpretation" of Section LIV, Act VII of 1843, published by the late Judges in the *Fort St. George Gazette* of the 9th December 1845, No. 1629, (p. 1075.)

2. By that "Interpretation" it was declared that a Magistrate, under the additional powers vested in him by Section LIV, Act VII of 1843, could not punish charges of "Cattle-stealing" to the extent laid down in Section VII, Regulation X of 1816.

3. From this view of the law, the Court, as at present composed, see reason to dissent.

4. Prior to the passing of Regulation VI of 1822, the Criminal Courts were empowered to, and constantly did, pass sentence under Section VII, Regulation X of 1816, in cases of "Cattle-stealing" for which the penalties prescribed in Section XXXIII, Regulation IX of 1816, were not deemed sufficient.

5. Clause first, Section LIV, Act VII of 1843, enacts "that the Magistrates be authorized to exercise the powers vested in Criminal Judges by Section VII, Regulation X of 1816, concurrently with the Subordinate Criminal Courts."

6. The terms of this provision are unqualified; there is nothing whatever to warrant the supposition that the Legislature intended to exclude cases of cattle-stealing from its operation; nor can any valid reason be assigned for such exclusion.

7. The Court resolve, therefore, to cancel the Interpretation above mentioned, and to declare by a Circular Order that, under Section LIV, Act VII of 1843, Magistrates are empowered in cases of cattle-stealing for which they may deem the penalties authorized by Section XXXIII, Regulation IX of 1816, insufficient, to pass sentence to the extent authorized in other cases of theft by Section VII, Regulation X of 1816.—*C. O. No.* 190, 28*th Feb.* 1848.

NOTE.—The Note on this subject under Clause four, Section III, Regulation VI of 1822, at page 120, was in type before the issue of this C. O. No. 190.

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## ACT X, 1845.

When a Warrant issues hereupon for arrest within the jurisdiction of the Supreme Court, certificate of the inability to serve the summons should be endorsed thereon.—*C. O. 7th Aug.* 1845.

## ACT XX, 1845.

*Article* 62.—The Judges of the Court of Foujdaree Udalut under instructions received from Government resolve to direct that in future Commanding Officers be furnished with official information of the mode in which all cases forwarded by them under the provisions of Section XXXIV, Regulation VII of 1832 to the Criminal Courts, may be disposed of; such information to be communicated by the several Criminal Judges by means of a report, to be prepared in the form subjoined to the Circular Order of the 10th April 1823.—*C. O. 9th Aug.* 1836.

## JAIL ORDERS.

1. Before any prisoners are sent, from a Zillah Station, to the Depôt at Chingleput, they shall be examined by the Surgeon of the Zillah, who shall certify to the officer in charge of the jail that they are in a fit state of health to proceed on the journey. If the Surgeon should consider it necessary that any of the prisoners should be allowed meat on the journey, or should find that any of them are in want of necessary clothing to protect them from the effects of the weather, and he shall state such opinion in his certificate, the officer in charge of the jail shall be authorized, thereupon, to issue an order for the supply of such necessary extra food or clothing.

2. A paper shall be drawn out and signed by the officer in charge of the jail, from which any prisoners may be sent, as above, containing a list of the prisoners and the allowance of food which each is to have on the road, and fixing the distance per diem beyond which they shall not proceed. If the distance from the station, whence the convicts are sent to Chingleput, be such as to render it proper to break the journey by rests, the officer in charge of the jail shall fix certain stations where the party may halt. In determining these points, the officer in charge of the jail is to bear in mind the bodily health and strength of the prisoners, and the length of their imprisonment, which may have, itself, induced considerable debility. To these directions the officer in charge of the jail will add such other orders as may appear to him necessary or expedient.

3. A copy of the Surgeon's certificate shall be given in charge of a trustworthy Peon, or Deloyet, who shall accompany the prisoners, from the station of their departure, until their arrival at Chingleput, and who shall be held answerable for the due performance of the orders therein contained.

4. Whenever the party shall arrive at any Zillah station, the said Peon shall report his arrival to the officer in charge of the jail at such station, and shall produce to him the paper of orders and the Surgeon's certificate. The Surgeon, at the said station, shall examine the prisoners, and, if he find them in a fit state to proceed on their journey, he shall certify the same on the back of the original certificate. If he should be of opinion that, from fatigue, debility, or other cause, the prisoners, although able to continue their journey, should be allowed longer rests, or to go shorter stages than those originally fixed in the Zillah from which they were first brought, he is to state this opinion to the officer in charge of the jail, who will make such alterations as may be necessary in the orders, and deliver them again to the Peon in charge, who is to obey such last orders, and proceed accordingly to the next station, where he is to make the like report. If the Surgeon, at any Zillah station, should be of opinion that any one or more prisoners, ought not, on

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account of debility or ill-health to continue his journey for a longer time than the party may be permitted to halt, he is to certify the same to the officer in charge of the jail of his Zillah, who will, thereupon, give an order for the detention of the said sick prisoner, a copy of which order shall be delivered to the Peon in charge, who, upon receipt thereof, shall be authorized to give up the said prisoner and to prosecute his journey without him. The prisoner, so detained, shall be forwarded to Chingleput, when sufficiently recovered, by the officer of the jail in whose charge he has been left.

5. Upon the arrival of the party at the Depôt at Chingleput, the Peon in charge shall deliver his orders, and the Surgeon's certificates to the officer in charge of the jail, who shall forward the same for the inspection of the Foujdaree Udalut, together with a report of the general state of health and condition in which the prisoners have been delivered into his charge.

6. With the view of giving complete effect to the foregoing rules, convicts shall be carried to the Sudder station in every Zillah between that from which they come and that of Chingleput where the Depôt is, and inspected by the officer in charge of the jail and Surgeon.

The practice of linking prisoners together when confined in jail is prohibited; and, if it shall be absolutely necessary to secure prisoners in that manner when they are marched from one station to another, it is to be done with moveable handcuffs, and not with irons which are rivetted.—*C. O. 22d July*, 1814.

Officers in charge of jails shall keep a descriptive roll of the several prisoners received into their respective jails according to the following form:

| Name of each prisoner received into jail. | Caste. | Age. | Height. | Colour. | Particular marks, features or defects. | When received. | How disposed of. |
|---|---|---|---|---|---|---|---|

*C. O. 21st Oct.* 1830, *B.*

## RULES FOR THE MANAGEMENT OF THE PUBLIC GAOLS.

1. The Criminal Judges are required, (by the Regulations,) to visit their gaols at least once a month; but it appears advisable, and is accordingly directed, that such visits should be weekly.

2. The Surgeons, when present at the Zillah stations, besides their daily attendance at the Hospital, shall also inspect the gaols once a week, and make a report to the Criminal Judge on each visit, on the general health of the prisoners, the quality of the food supplied to them, the state of the gaols with regard to the cleanliness, and, generally, any circumstances relative to the care and condition of the prisoners which may come to their knowledge.

3. The visits of the Criminal Judge shall be made without previous notice to the officers of the gaol, and not at any fixed period of time.

4. The Criminal Judge shall prescribe a set of written rules for the internal economy of his gaol, relating to the articles which may be admitted into the gaol for the prisoners, the hours when those articles may be admitted, and the persons who may be permitted to converse with the prisoners: and the gaoler shall be held responsible for the due observance of such rules, or for the immediate report of any breach of them to the Criminal Judge.

5. The general charge of the prisoners, with the internal management of the gaol, as far as relates to cleanliness, to the distribution of the prisoners in the wards, to putting on fetters, (and the sort of fetters), and to the prevention of disorderly behaviour, shall be vested in the gaoler.

6. All orders for receiving prisoners into the gaol, and for their final discharge, shall be signed by the Criminal Judge, and addressed to the gaoler.

7. The prisoners, on their being lodged in the wards in the evening, and on their being taken out in the morning, shall be counted over by the gaoler.

8. At the time of locking up the prisoners, the working tools used by them, shall be carefully collected and counted, and then deposited during the night in a place of safety without the gaol; sufficient search also shall be made to prevent the concealment of any

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weapon or implement about the persons of the prisoners, or in the gaol, whereby the prisoners might injure one another, or be enabled to effect their escape.

9. Prisoners are not to be allowed to leave the gaol for the purpose of taking food, when there is accommodation in the interior of the gaol for cooking, without the sanction of the Criminal Judge.

10. The allowance for the daily support of each person in confinement, whether in money or otherwise, is to be inserted in the gaol regulations.

11. Each convict is to be supplied with one cumbly, or country blanket, on his admission into the gaol, and this allowance is to be repeated annually during the term of his imprisonment.

12. Each convict is to be allowed a bamboo mat to sleep upon.

13. The sleeping apartments are to be cleared of every thing in them once a day, except in rainy weather, and the doors and windows of these apartments are to remain open all day to admit fresh air.

14. The gaoler is to be provided with a blank book, in which are to be inserted under proper columns the names of the prisoners, their caste, the date of their committal to the gaol, the period of their imprisonment, whether confined in irons or not, the nature of their employment, and the number of hours they are employed in each day. A blank column is to be kept in this book, headed with the word "Remarks," under which the death, discharge, or removal of the prisoners is to be inserted, if either takes place.

15. The baskets of those prisoners who are employed on the roads or public works, are to be of the size used by tank diggers, and neither the gaoler, nor any one under his authority, is to permit the use of different baskets, unless under written authority from the Criminal Judge.

16. The gaoler every morning and evening, at the opening and shutting up of the gaol, shall visit personally every part of the gaol, and carefully inspect the windows, walls, doors and gratings, in order to discover any attempt to cut the iron bars, or to undermine the walls of the gaol.

17. The fetters generally used shall be of a light and uniform construction, and no fetters exceeding the usual size, and weight, shall be put upon a prisoner, without the special sanction of the Criminal Judge.

18. The gaoler shall not, without a special order from the Criminal Judge, take off the irons of any prisoner, except in case of sudden emergency not admitting of the delay of a reference to the Criminal Judge, or when prisoners may be confined in the Hospital in too weak a state to bear the weight of their irons; and such cases, when they occur, shall be immediately reported to the Criminal Judge.

19. Whenever the Surgeon, or Native Doctor, may judge it necessary to take off a prisoner's fetters, in consequence of sores or illness; information shall be given to the gaoler; when the fetters are to be taken off in the presence of that officer. The gaoler shall also report the circumstances of the case to the Criminal Judge.

20. The process of Godena as directed by Section XXXV, Reg. VII of 1802, shall be performed on all prisoners sentenced to transportation for life, immediately on the Criminal Judge's receiving the Warrants of the Session Court, unless the Criminal Judge should see cause in any instance to postpone the operation.

21. Different apartments in the gaol shall be appropriated, as far as may be practicable, to the particular descriptions of prisoners, who are required to be kept separate, under the provisions of Section XXIX, Reg. X of 1816. The different classes of prisoners shall, on no account, be permitted any intercourse; and the Criminal Judges are required to be particularly careful, that persons in confinement for examination be never imprisoned in the same ward with prisoners under sentences of punishment.

22. After the prisoners shall be locked up for the night, the keys of the wards shall be lodged with the gaoler.

23. No prisoner shall be released on any occasion during the night, and all prisoners, ordered to be discharged, shall be brought before the Criminal Judge, and receive their discharge in the presence of the Criminal Judge.

24. In the absence of the gaoler, the Criminal Judge may authorize his Naib to perform the duties of that officer, but without the authority of the Criminal Judge, the gaoler shall not delegate his personal duties to his Naib, or to any other person.

25. No prisoner shall be allowed to possess, or have access to, any private dwelling in

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the vicinity of the gaol; nor shall the families of any of the prisoners be permitted to erect dwellings nearer to the gaol, than the Criminal Judge may judge proper.

26. No prisoner shall be allowed to keep a shop in the gaol or its vicinity.

27. The wives or other female connections of the prisoners, shall not be permitted to enter the gaol.

28. Intoxicating liquors and drugs are expressly prohibited from being admitted into the gaol; and the officers of the gaol shall be careful to enforce a strict observance of this prohibition.

29. The prisoners shall not be permitted to give any money, or to give, sell or exchange, any property whatever to, or with, any person attached to the gaol, or any public officer of whatever denomination.

30. The cumblies or other clothes annually allowed to the prisoners, shall be served out at stated periods, and an account rendered of the old ones; care also shall be taken that the prisoners do not sell or dispose of them in any way.

31. The bags, &c. of the prisoners shall be examined once a week, both in the gaols and when on the roads, in the presence of the gaoler, and should any files or other instruments for effecting their escape be found in them, they shall be taken away, and the circumstances reported to the Criminal Judge.

32. Whenever any money may be found on the person of a convict, and the Criminal Judge shall be of opinion, that it is more than sufficient for the ordinary and proper maintenance of the convict (in addition to his daily diet allowance) with reference to his circumstances and situation in life; and there may be reason to apprehend that such money may be appropriated to corrupt purposes, the Criminal Judge may take away as much of the money as he may judge proper, keeping it in deposit, and granting the convict a receipt for the same. The convict shall be allowed the option of taking out the money in such portions, as the Criminal Judge may judge proper, of giving it to his relations, or of leaving it in the Foujdaree Court, till the period of his discharge.

33. No officer shall maltreat the prisoners on any pretence whatever. If any of the prisoners shall make a riot and disturbance, or attempt to resist any of the guards, they shall immediately be put in chains and hand-cuffs, and the circumstances of the case shall be reported to the Criminal Judge.

34. All orders and regulations relating to the interior economy of the gaol, the duties of the gaoler, and his officers, shall be translated into the Native languages, and copies made of the same, and hung up on a board, in a conspicuous part of the gaol, for general information.

35. The Sepoys and Peons in charge of the prisoners, either on work or elsewhere, are to be enjoined to prevent, as much as possible, any person holding communication with the prisoners, and always to report to the gaoler when any improper or suspicious communication may appear to have taken place, that the party may undergo a strict examination before his being shut up, on re-admission into the gaol, for the night.

36. All the prisoners liable to hard labour, shall be brought out of the gaol by sunrise, a reasonable time shall be allowed, either at that hour, or at noon, as the Criminal Judges may deem most convenient, for the prisoners to take their meal. The rest of the day shall be occupied by the prisoners in the performance of the prescribed labor. But they shall uniformly be conducted back to the gaol, soon enough to allow of their taking their evening meal, and of being mustered, searched, and properly secured, before it is dark.

37. The prisoners shall not be permitted to have any intercourse with their female connections, or to receive any articles from them without the knowledge of the Criminal Judge.

38. On the return of the convicts to the gaol, their fetters shall be examined, and their number counted.

39. Any convict who shall be found to have loosened his irons, shall be fettered with hand-cuffs and neck-chains.

40. All prisoners detained under examination, shall be confined in a distinct apartment, or apartments, of the regular gaol.

41. On the apprehension of prisoners at the Sudr station, as well as on the arrival of prisoners sent in by the Magistrates or Heads of Police, they shall be delivered over to the gaoler, with an order under the signature of the Criminal Judge, specifying their

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names, in what apartment of the gaol, or with what description of prisoners, they are to be confined, and whether they are to be secured with ropes or fetters.

42. The gaoler shall carry the terms of the order into execution, and shall take every possible precaution for preventing the prisoners, under examination, from associating and conversing with the convicts in the gaol.

43. Whenever the attendance of any prisoners in the gaol may be required before the Criminal Judge, the Nazir shall send a list of their names, under his signature, to the gaoler, and the gaoler shall deliver the prisoners mentioned in the list to the charge of the officer sent for them, with a sufficient guard for their security.

44. The walls of the gaol shall be scraped, and white washed once in every quarter.

45. The linen of the prisoners shall be regularly washed at stated periods.

46. It shall be the particular duty of the gaoler and the officers attached to the gaol, under such rules and orders as may be prescribed by the Criminal Judge, to prevent the water in the wells from being polluted.

47. In the weekly inspection of the gaol, made by the Surgeon of the Station, he shall be careful to see that all prisoners who are actually sick, and require Medical attendance, are removed immediately to the hospital.

48. The Native Doctor shall reside in the vicinity of the gaol.

49. A sufficient number of cots, of the common construction, shall be provided for the accommodation of the sick confined in the hospital.

50. The rules prescribed by Section XXIX, Reg. X of 1816, for the separation of different descriptions of prisoners, are to be observed as much as possible, when they are at work on public roads, or other public works.

51. All prisoners detained in custody for security only, more especially such as may not be confined as notorious robbers, or on suspicion of robbery, to be kept as far as possible distinct from prisoners convicted of specific offences.

52. Prisoners, generally, of the description above referred to, are to be confined without fetters, except when the Criminal Judge may judge the use of them requisite to prevent the escape of particular prisoners, and in such case the Criminal Judge shall issue a written order, for that purpose to the gaoler.

53. It appearing to be expedient for the health and cleanliness of convicts subject to hard labour, as well as for the convenience of the guards, who have charge of them, that when circumstances may admit of it, they should be exempted from labor, during one day in each week, the Criminal Judges are required to observe as a general rule, what is now the established practice in many districts, that except on urgent occasions, when the labor of convicts engaged in the execution of any particular work cannot be dispensed with, they shall not be employed on Sundays; and at all events a part of every Sunday shall invariably be allowed to them, and to their guards, for the purpose of cleanliness. The Criminal Judges shall at the same time be careful that this indulgence is not abused by any misbehaviour, and shall adopt such measures as may appear best calculated to secure the due attainment of the object intended by it.

54. Convicts shall never be employed out of gaol under the custody of a single peon, but shall be employed, as far as possible, collectively, under the guard of as many Peons as can be spared for that purpose.—*C. O. 8th Oct.* 1821, *B.*

It appears to the Court to be desirable that the allowance to all prisoners in the criminal jails should be issued in grain exclusively instead of money It is also of importance to the discipline of the jails that no luxuries, such as betel, tobacco, and opium, should be issued to the prisoners except on the requisition of the Medical officer.—*C. O. 25th Jan.* 1830, *B.*

The Court of Foujdaree Udalut desire to repeat their positive orders, for the strictest enforcement, throughout the country, of the prohibition against the use of betel, tobacco, opium, or other luxuries within the criminal jails, except on the requisition of the Medical officer. This order must not be observed more at one jail than at another; but is to be rigidly enforced at all. Indeed recent orders from Government state that the prevalence of crime throughout the country, may in a great degree be ascribed to the circumstance of the punishment being disarmed of its terrors, by the comforts of the accommodation, and the abundance of food and clothing which the inmates of the jails enjoy.—*C. O. 27th Oct.* 1830, *A.*

The Medical Board report that the Medical officers in charge of several jails have stated their opinion that the recent interdiction of tobacco, opium, and betel, has been injurious

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to the health of many of the prisoners, and they express their concurrence in that opinion. It has already been observed that the existing rules authorize these articles to be allowed in particular cases on the requisition of the Medical officer. As the interdiction of these articles may perhaps have been enforced too strictly, the Court of Foujdaree Udalut think it proper to call the attention of the several officers in charge of jails to the spirit of the order contained in para. 1 of their proceedings under date the 27th October 1830, and to advise them that the prohibition of tobacco, &c., is never to be enforced against the opinion of the Medical officer, but on the contrary, that he should be invited to point out the cases in which he thinks such indulgences requisite to the preservation of health.—*C. O. 5th June,* 1832.

The several officers in charge of jails were directed to observe the following system of supply:

NORTHERN DIVISION.

One seer of rice to be allowed to each prisoner, no *money* to be paid to prisoners for the purchase of firewood, curry stuff, oil, salt, and other necessaries, but those articles to be supplied under the orders of the officer in charge of the jail, at a fixed rate of 30 cash per diem for each prisoner.

WESTERN DIVISION.

Sixty Rupees weight of rice to be allowed daily to each prisoner in the Western Division, a third more to be given at Mangalore to convicts employed in cutting stones or doing other hard work. For the purchase of firewood, curry stuff, oil, salt, and other necessaries, no *money* is to be issued, but those articles are to be supplied to the prisoners at the rate of 7 reas for each prisoner in confinement at Mangalore, and 6 reas to each prisoner in confinement in the other jails in the Western Division.

CENTRE DIVISION.

Half a Madras measure of rice to be allowed daily to each prisoner, no *money* to be paid to prisoners for the purchase of firewood, curry stuff, oil, salt, and other necessaries, but those articles to be supplied under the orders of the officer in charge of the jail, at a fixed rate of 4 pice per diem for each prisoner.

SOUTHERN DIVISION.

Excepting at Coimbatore, where 100 Rs. weight of cholum per diem, is considered to be ample, the allowance to each prisoner in the Southern Division to be fixed at 80 Rs. weight of rice daily, no extra quantity being issued on Sundays; *no money* to be paid to prisoners for the purchase of firewood, curry stuff, oil, salt and other necessaries, but those articles to be supplied under the orders of the officer in charge of the jail at a fixed rate of 4 pice per diem for each prisoner.—*C. O. 2d June,* 1831.

Magistrates who may have prisoners under their charge shall observe the same rules regarding the dieting of prisoners as have been prescribed to the Criminal Judges in the same districts.—*C. O. 25th June,* 1834.

The Court of Foujdaree Udalut with the sanction of Government, deem it proper to notify with reference to their orders of 25th June 1834, on the subject of the revision of the jail establishments, for the information and guidance of the judicial authorities in charge of jails, that it is not necessary that the proportion of Peons to the number of convicts employed in labour outside the jail should be regulated *daily* which would necessarily be an inconvenient proceeding, but from time to time as to the officer in charge may seem requisite, with a view of preserving as close a conformity as possible with the orders of Government upon the subject.

In the event of danger being apprehended, or circumstances occurring which may, in the opinion of the officer in charge, render necessary the adoption of extraordinary measures, he will be justified in using his own discretion in entertaining extra Peons, but must immediately report *what* steps he has taken, to meet the emergency, for the information of the Foujdaree Udalut.—*C. O. 15th Oct.* 1834.

The Judges of the Foujdaree Udalut having observed that their Circular Order of the 25th June last, which directs one Peon to be entertained for every four convicts "employed *at work outside* the jail," has not been generally attended to, resolve to point out to the subordinate officers in charge of jails, that under that order, the guard of extra Peons must be invariably regulated by the number of prisoners actually worked outside the jail; and that no extra Peon is to be entertained for prisoners of any class put to labour, within the walls of the jail. For their supervision, and safe custody, the fixed jail guard is considered by the Judges to be sufficient.—*C. O. 13th March,* 1835.

The Court resolve to direct the several Session Courts to instruct the officers subordinate to them in charge of jails, that the diet allowance fixed by their orders is to be considered as the maximum for convicts in full health and strength, employed in hard labour, but that it is competent to them to modify it at their discretion, according to the condition and circumstances of individuals, so as to adapt it to their actual wants, not allowing to any more than is necessary for his subsistence.—*C. O. 25th Jan.* 1832.

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The immediate infliction of the corporal punishment adjudged against prisoners sentenced to transportation, is the duty of the Criminal Judge to whom the Warrant is addressed; and when the inscription prescribed by Section XXXV, Reg. VII of 1802, may not have been made, agreeably to para. 20 of the Jail Regulations, in consequence of there not being at the station any person able to make it, it should be made at Chingleput on the convict's arrival.—*C. O.* 20*th Feb.* 1823, *B.*

Whenever, in the case of a person who may have been sentenced by a Session Court or by the Foujdaree Udalut, to be confined for a certain specified period in the same Zillah, in which he was committed for trial, the term of such imprisonment shall expire, the Criminal Judge of the Zillah shall carry into effect the Warrant for his discharge, giving due information of the same to the Magistrate of the Zillah, as also, in cases where the prisoner may formerly have resided in another jurisdiction, to the Magistrate of such jurisdiction.—Nothing in this order is intended to prevent a Criminal Judge from demanding bail where it shall be so specified in the sentence of the Session Court, but it is to be clearly understood that no persons sentenced to temporary imprisonment by a Session Court, or by the Foujdaree Udalut, shall be finally released from jail without due notice of the same being communicated to the Magistrate of the Zillah.—*C. O.* 3*d Oct.* 1817, *A.*

Whenever a convict sentenced to temporary imprisonment may, on the arrival of the period fixed for his discharge, be in confinement in a jurisdiction different from that in which he was committed for trial, the officer in whose charge such convict may then be, shall carry into effect the Warrant for his discharge, giving due information of his enlargement to the Magistrate of the Zillah, and also to the Magistrate of the jurisdiction in which he formerly resided; furnishing the person to be discharged, not only with the allowance for his subsistence on the way back to his village, at the prescribed rate of diet money for the calculated period of his journey, but also with the allowance for one months maintenance, not exceeding five Rupees, to which convicts released after an imprisonment of six months or upwards, and *appearing to be in want of such assistance,* are entitled under Section XXXII, Regulation X of 1816.—*C. O.* 19*th Sept.* 1837.

The Court of Foujdaree Udalut direct that henceforth, every officer in charge of a jail shall have authority, without previous reference to this or to the Session Court, to transfer to any other jail, which may be indicated by the Medical officer of the jail, any convict whose removal on account of sickness, may be certified by the latter officer to be urgently necessary, reporting the circumstance to the Foujdaree Udalut, and at the same time forwarding a copy of the Medical certificate of the case.

The original warrant for the confinement of the convict shall be sent with him, and shall be endorsed over to the officer in charge of the jail to which he is sent; and the latter officer shall receive the convict, and deal with him in all respects the same as if originally sentenced to be imprisoned in the jail under his charge.—*C. O.* 27*th Aug.* 1841.

All prisoners sentenced by the Court of Foujdaree Udalut, or by the Session Courts, to be punished with stripes, shall be brought before the Criminal Judge immediately previous to the infliction of the corporal punishment, that he may, by personal observation and a reference to the Surgeon of the station, satisfy himself that the prisoner does not labour under any bodily infirmity, and that his general state of health at the time is such as to render him capable of sustaining the punishment without the probability of its endangering his life.

The whipper is to be positively enjoined on all occasions of administering the punishment of stripes, to strike the prisoner on the upper part of the back only; with every possible attention to prevent the blows falling on any other part of the body.

All prisoners sentenced by a Criminal Judge to corporal punishment, are to be examined by the Surgeon of the station, or, in the event of his absence, by the Native Doctor previously to their being punished, and the punishment is to be postponed of any prisoner, whom the Surgeon, or Native Doctor, may consider in too infirm a state to receive it.

The Native Doctors attached to the jails of the several stations, are to be present on all occasions when prisoners are punished with stripes; and the punishment is to be stopped at any stage of it, if the Native Doctor shall be of opinion that the infliction of the remaining stripes will endanger the prisoner's life, in which case the remainder of the punishment is to be postponed, until the Surgeon of the station shall consider the prisoner to be capable of sustaining it.—*C. O.* 2*d Aug.* 1821.

The Governor in Council authorizes the several officers in charge of jails to apply to the Magistrates of their respective districts for a guard of Police Peons to escort convicts passing on to the Depôt at Chingleput.—*C. O.* 18*th Oct.* 1822.

The rules contained in the Circular Order of the Court of Foujdaree Udalut of the 22d

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July 1814, respecting the transmission of prisoners under sentence of transportation from a Zillah station to the Depôt at Chingleput, are hereby extended to the cases of prisoners sentenced to banishment from one district to another, under the provisions of Clause third, Section VIII, Regulation XV of 1803.

The Court of Foujdaree Udalut direct that besides the "paper" and "copy of the Surgeon's certificate," referred to in the 3d paragraph of the Circular Order above mentioned, the Peon or Deloyet, accompanying the prisoner, be furnished with a letter to the address of the officer in charge of the jail to which the prisoner is banished.

And as doubts appear to be entertained respecting the officer whose duty it is to depute the "Peon or Deloyet," in charge of the prisoners, the Court of Foujdaree Udalut resolve to direct, that the said Peon be in every instance furnished by the Criminal Court whence the prisoner is sent originally: the Magistrates being required to provide only the escort from one district to another.—*C. O. 9th Dec.* 1837.

The Court direct that on such occasions the gang be accompanied by their usual guard of Peons belonging to the Zillah Jail, in addition to the guard of Peons which may be furnished by the Magistrate, for their safe conduct.—*C. O. 3d March*, 1841.

The Judges enjoin all officers in charge of jails on no account to allow of the employment of convicts, condemned to labour in irons, on any other than strictly public works.

The attention of Session Judges is hereby called to this subject: and they are especially required to satisfy themselves at every Station, that this order is duly attended to, and not to allow it to be evaded.—*C. O. 1st Aug.* 1827.

The Judges of the Court of Foujdaree Udalut, deeming it proper that they should be furnished with precise information regarding the actual produce of the labor of the prisoners, and the application of the funds arising therefrom, direct that statements, in the annexed form, be submitted to them on the 31st March, the 30th June, the 30th September, and the 31st December, by all officers in charge of jails:

## FORM.

AMOUNT REALIZED BY THE LABOR OF THE PRISONERS IN THE FIRST QUARTER OF 184 .

| | |
|---|---|
| By the sale of Paper............ | Rupees. |
| Do. do. Cloth ............ | do. |
| Do. do. &c. ............ | do. |
| Do. do. &c. .............. | do. |
| Total..... | Rupees. |

DISBURSED OUT OF THE SAID AMOUNT.

| | |
|---|---|
| On account of gunnies for making paper .......... | Rupees. |
| Do. small articles required for do. .......... | do. |
| Do. do. do. weaving ........ | do. |
| Do. do. do. &c. ............ | do. |
| Do. do. do. &c. ............ | do. |
| Total.......... | Rupees. |
| Balance lodged in the Treasury and carried to the account of Government ...... ... | ..... Rupees. |

*C. O. 9th June*, 1837.

Criminal Judges in supplying the Magistracy, or the Military, or other authorities, with convicts, shall send those whose sentences are shortest, keeping up the supply by new convicts as their sentences expire.—*C. O. 11th March*, 1830.

Two instances of Missionaries being permitted to visit prisoners condemned to death, with a view to their conversion to Christianity, having come to the notice of the Court and Government, the Foujdaree Udalut circulate for the guidance of officers in charge of jails, the sentiments of the Government on the subject, as conveyed in a letter of 20th Jan. 1829.

"The Governor in Council prohibits, under pain of being visited with the severest displeasure of the Government, interference in any way with the religion of the natives, and directs, that especial care be taken on such occasions of public punishment, officers do not so conduct themselves as to convey to those who are attendant upon such awful ceremony, the impression that they are more intent upon the conversion of the criminal to Christianity, than upon the due execution of the Law."—*C. O. 10th Dec.* 1830.

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It is the imperative duty of every officer in charge of a jail to receive, as well on Sunday, as on any other day of the week, all prisoners sent into jail, whether by the Magistracy or the Police, and to open all public papers when delivered to them. The Judges of the Foujdaree Udalut confine themselves, to what is absolutely necessary for the good of the public service; for pardons in capital cases, and other emergent communications, might otherwise prove useless. But they take the present opportunity to communicate these observations to all officers in the Judicial Department, that each may be aware of the principles which the head of their department is prepared strictly to enforce in this respect. —*C. O.* 30*th Jan.* 1834.

"Government will not object to sanction the grant, on quitting jail, to prisoners who may have distinguished themselves by their industry, of a sum of money out of the proceeds of their labour, proportioned to the comparatively superior quantity of labour performed by them; and authorizes the Officers in charge of Jails to bring cases of this description to the notice of Government."—*C. O.* 4*th March*, 1831.

The Foujdaree Udalut direct that the peons of the jail guard be enjoined in cases of attempt at escape on the part of the prisoners, to abstain from all unnecessary violence towards them, and never to make use of their swords, unless it should be necessary for their defence from the attack of the prisoners upon them.—*C. O.* 18*th April*, 1831.

The intention of the Court of Foujdaree Udalut in their Circular Order of the 18th April last, was to put a stop to acts of cruelty on occasions of this nature, which had been most forcibly brought under their consideration: it was not however meant to prohibit the use of the sword in cases of absolute necessity to prevent the escape of prisoners.—*C. O.* 16*th June*, 1831.

Frequent instances, having been brought under the notice of the Foujdaree Udalut, of peons in charge of working parties of convicts, at a distance from the jail, being surprized by the latter, and disarmed, and of the consequent escape of the convicts, the court resolved to direct that the peons be enjoined to keep their swords drawn in their hands, ready for use, so long as they may be employed on such duty, and not to allow convicts to approach so near to them, as to lay hold of their weapons.—*C. O.* 8*th Jan.* 1840.

The Court of Foujdaree Udalut direct that a copy of the extract from the following Minutes of Consultation be communicated to the several officers in charge of jails for their information and guidance respectively:

"Resolved, that in Tinnevelly and other districts, where, in some parts, the Circar share of the produce is received in kind, the Collectors be authorized to provide the supplies of grain required by the Judges for the subsistence of the prisoners in the jails. The Judge will furnish to the Collector at the time of harvest, a statement of the quantity which he estimates will be required for the year's supply, which quantity will be reserved by the Collector, in disposing of the Circar share of produce, and immediately made over to the Judge at the Jummabundy price, the duty of the Collector being confined to the provision of the supply. The Foujdaree Udalut and the Board of Revenue will be pleased to issue the necessary subsidiary orders for giving effect to the foregoing resolution.— *C. O.* 18*th June*, 1831.

The sums earned by the labour of prisoners must be carried to the credit of Government in the Collectors' treasury monthly.—*C. O.* 3*d. Jan.* 1835.

In pursuance of the instructions of Government under dates the 6th and 10th Instant, and with reference to their circular order of the 3d January last, the Judges of the Foujdaree Udalut circulate the following orders for the guidance of the several officers in charge of jails:

1. Officers in charge of jails are authorized to draw upon the Collector for the sums they may require, to enable them to purchase the necessary supplies for the subsistence of the prisoners, and the raw material for the manufactures carried on in their jails. They are to keep an account of all receipts from, and payments into the treasury of the Collectors, to be closed and settled monthly.

2. Those officers in whose districts there is a probability of a rise in the price of grain, are further directed, to take immediate measures, for providing at the present wholesale prices, a sufficient quantity of grain for the average annual consumption of the prisoners. They are accordingly authorized to draw on the Collectors for the requisite funds for this purpose, and where there may not be the means of storing the grain within the walls of the jail, they may submit for sanction a bill for the rent of buildings for the purpose.

3. In making their arrangements for the purchase of their annual supply of grain, the Criminal Judges will understand, that they are specially enjoined by the orders of

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Government, not to call upon the Collectors to interfere, either by issuing takeeds to the Revenue officers, or procuring it through the agency of Revenue peons. The contracts are to be made by the Criminal Judge, without the interposition of the officers of Government, and immediately with such persons, whether Merchants or Farmers, as are likely to furnish it on the most advantageous terms. It is also desirable, if possible, that the grain should be received and stored at intervals, instead of all at one period.

4. The several Criminal Judges and officers in charge of jails will further understand, that it will be their duty under these orders, to lay in an annual supply at the close of the harvest, or at such period in each year, when grain is usually cheapest.

5. In the districts where the public revenue is received in kind, the officers in charge of the jails will carefully attend to the circular order of the 18th June 1831, and upon the receipt of these instructions, they will furnish a memorandum to the Collector of the quantity of grain required for the annual consumption of their jails.—*C. O.* 16*th March*, 1835.

Prisoners detained on a requisition of security should be put to labour only in, or about the jail, and not worked with convicts on public roads.—*C. O.* 25*th July*, 1831.

Prisoners confined on requisition of security should be supplied with prison clothing as well as others, and the same rule regarding clothing is applicable to them.—*C. O.* 3*rd May*, 1832.

Whenever the escape of a convict is reported, all the circumstances of the case as well as the measures adopted for his re-apprehension should be stated at the same time.—*C. O.* 28*th March*, 1832.

The Judges of the Foujdaree Udalut, direct that, in all future cases, in which prisoners may break out of, or escape from jail, the Criminal Judge, or other officer in charge thereof, submit, with his own report of the circumstances of the case, the depositions on oath of all persons who may have been witnesses to the affair, and that the Session Judge will enquire into the subject on the spot, and submit in his report, his opinion of the conduct of the parties entrusted with the care of the prisoners.—*C. O.* 19*th Nov.* 1832, *B.*

The Governor in Council desires that it be made a standing rule for the future, that, whenever such an event occurs (as an escape) the officer in charge of the jail shall transmit direct to the Secretary to Government in the Judicial Department a copy of his report to the Session Court.—*C. O.* 20*th May*, 1834.

"Government attaches the greatest importance to the condition of the public roads at every station. If the prisoners are too few in number to the adequate repair of them, no part of those confined ought to be employed in other and less necessary works."—*C. O.* 16*th Feb.* 1833.

Officers in charge of jails should supply grain in the husk to all persons in confinement within their jail, who may not be liable to labour.

This grain the parties must be required to beat out for themselves, but the Judges of the Foujdaree Udalut would exclude from the operation of this order the case of all persons, for whom, from their caste, age, strength or other circumstances, such employment may be considered improper.—*C. O.* 16*th Sept.* 1833.

In seasons of generally "prevalent disease," prisoners recently convicted; prisoners of a delicate frame or unhealthy appearance, and others who, from their station in life, may not have been previously accustomed to labour, "should be employed, only on the lighter kinds of labour and for a shorter period than is usual and advantageous, in ordinary circumstances."

All prisoners under sentence, or detained on requisition of security, or committed for trial before the Session Court, should, unless they decidedly object to it, be vaccinated; where however, the small pox may break out in a jail, the Medical Officer, without reference to the wishes of the prisoners, will be justified in adopting the most effective measures to check so infectious a disease.—*C. O.* 12*th Sept.* 1834.

In accordance with the orders of Government under date the 19th Instant, the Court of Foujdaree Udalut direct that all convicts and prisoners detained on requisition of security, be vaccinated without reference to the wishes of these individuals. But this rule is not to extend to prisoners of any other description.—*C. O.* 25*th Sept.* 1834.

Officers in charge of jails shall cause to be kept by the Jailer a Muster Roll or Register of the Duffadars and Peons, appointed for duty every night, with the names of the persons fixed for each watch: and further to instruct the Duffadar of the guard, on every relief of a sentinel, to accompany the relieving Peon to his post.

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With a Register of this description, it will be easy to ascertain at any time what Peons were, or ought to have been, on duty at any particular period: who will thus be made immediately responsible for the safe custody of the prisoners committed to their charge.—*C. O. 23d Sept.* 1834.

Officers in charge of jails are strictly prohibited from making any extra allowance whatever, to prisoners in their charge under sentence of execution.—*C. O. 2d Feb.* 1835.

In all cases where it is not otherwise especially directed in the Warrant, the bodies of all persons executed are to be invariably buried at the foot, or in the immediate vicinity, of the gallows.—*C. O. 23d Feb.* 1835.

Government having, under date the 11th Instant, been pleased to vest the Judges of the Foujdaree Udalut, with discretion to authorize small monthly disbursements for bringing up the children of convicts, in cases where there are no relatives, nor others willing to take charge of them; and to direct, that a quarterly statement of all such payments shall be submitted for the information and special sanction of Government, they forward the annexed form of statement; and desire that the several officers in charge of jails may be required to furnish this statement on the 31st March, the 30th June, 30th September, and 31st December in each year, whenever they have been authorized to make the disbursement referred to.

| Name and Sentence of the Convict. | Child's Name and Sex. | Age of the Child. | Date of first disbursement. | Charged per mensem. | Total expenditure to this date. |
|---|---|---|---|---|---|
| | | | | | |

*C. Os. 24th August* 1835, *and 8th March* 1836.

The Court of Foujdaree Udalut, having observed that parties of convicts are not infrequently detached to gather firewood, &c., in jungles at a distance of several miles from the jail, and that in several instances they have availed themselves of the facilities afforded by the situation, to escape from their guards, deem it necessary to direct, that the practice in question, wherever it prevails, may henceforward be discontinued, as unauthorized and inexpedient.—*C. O. 29th Jan.* 1836.

All guards transferred with convicts to Stations Civil or Military, shall be placed under the exclusive control of the officers under whom the convicts are employed, and those officers shall have authority, on sufficient grounds, to dismiss such guards and to supply vacancies as occasion may require.

It is not, however, intended by these instructions to sanction any alteration in the existing arrangements for providing funds for the maintenance of the convicts and the pay of the Peons.—*C. O. 14th Feb.* 1837.

The Court of Foujdaree Udalut circulate the subjoined extract from the Minutes of Consultation of the 16th instant for the guidance of all officers in charge of jails on the occasion of their giving effect to any order for the transfer of convicts destined for employment on public works in the Provinces.

"The Governor in Council requests that orders may be issued to all officers in charge of jails, and Civil Medical Officers, impressing upon them the necessity of observing the utmost care in the selection of the convicts for employment on works of this nature, and informing them that none but able bodied individuals, in a perfect state of health, and in full possession of their natural strength and vigour, shall be included in the gangs. Government will hold the officers despatching the gangs responsible for the due observance of these orders, and any deviation from them will be visited with marks of the severest displeasure."—*C. O. 24th Oct.* 1838.

Instances having come to the notice of the Court of Foujdaree Udalut, of officers in charge of jails having, when ordered to transfer convicts to a neighbouring district, for the purpose of their being employed on some public work, selected prisoners convicted of the crime of murder by Thuggee, or of the offence described in Act No. XXX of 1836, the Judges prohibit any future removal of a Thug convict to a detached working party, without the special order of the Court of Foujdaree Udalut.

The Court of Foujdaree Udalut also direct, that no convict of *desperate character* be transferred to a working party detached for employment at a distance from the jail.—*C. O 2d March,* 1841.

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Instances have come to the notice of the Court of Foujdaree Udalut of officers in charge of jails having, when ordered to transfer convicts to a neighbouring district, for the purpose of their being employed on some public work, selected prisoners especially banished, during the period of their sentences, to the particular Zillah in which their jail is situated; the Judges resolve to prohibit any such removal taking place without the special order of the Court of Foujdaree Udalut.—*C. O.* 8*th Jan.* 1839.

Several instances of *repeated* escape from jail by the *same* convicts having come before the Foujdaree Udalut, they, in pursuance of Section II, Regulation X of 1832, direct the several officers in charge of jails to adopt measures for specially securing, *at night*, all convicts who may have once broken jail, or who may otherwise have effected their escape from legal custody.

The number of prisoners so secured, and the method adopted for securing them, to be always specified in the monthly returns.—*C. O.* 1*st March*, 1841.

A *Descriptive Roll* as well as List, shall be sent with every party of convicts forwarded from any Zillah to the Depôt at Chingleput, under sentence of transportation.—*C. O.* 26*th June*, 1841.

The Reports of the Subordinate officers upon the escape of prisoners from their jails or guards, shall be, in future submitted to the Session Judges, and not, as at present, transmitted direct to the Foujdaree Udalut.

The Session Judges on receiving these Reports, will issue such instructions as they may deem requisite: and will forward a copy of the Report and of their opinion, or order thereon to the Court of Foujdaree Udalut.—*C. O.* 6*th Jan.* 1847, *No.* 183.

# MISCELLANEOUS ORDERS.

The Seal prescribed by Section XIV, Regulation II of 1802, is to be used for all official acts done by the Judges of the several Zillah Courts, whether on the Civil or Criminal side of such Courts, and no paper bearing a seal other than that prescribed by the Section aforesaid, can be considered as the regular official act of a Zillah Criminal Court.—*C. O.* 5*th Dec.* 1817.

Blank statements are not to be forwarded, but in lieu thereof, a letter should be addressed to the Register of the Foujdaree Udalut, containing the information which these blank statements would convey.

Returns to precepts of Foujdaree Udalut by Session Judges, or of Session Court by Criminal Judges or Magistrates, shall not be made by a simple endorsement, to the effect "that the precept has been executed;"—but the substance of the order, contained in the extract of the Court's proceedings, accompanying the precept, be recited in the return, and a report subjoined, as to how far execution may have been done.

The Court deem it proper also to direct that the Criminal Judges and Magistrates do, in their returns to precepts from the Session Courts and Foujdaree Udalut, recite the substance of the orders contained in the extracts of proceedings accompanying the precepts, as required in returns from the Session Courts by the orders of the Court of Foujdaree Udalut, dated 4th September 1820.—*C. Os.* 4*th Sept.* 1820, *and* 18*th Nov.* 1823.

The Foujdaree Udalut consolidate and explain all former orders respecting insane prisoners as follows:

It will continue to be the duty of the Magistracy to send to the Criminal Judge, all insane persons, from whose insanity they may have reason to apprehend fatal effects, unless their friends shall enter into engagements to take such care of them as to prevent the possibility of their doing mischief.

Such persons shall be confined in the hospital attached to the jail, under care of the European Medical officer. On his report, the Criminal Judge may restore them to the charge of their friends, without applying for special permission from the higher Courts; but in cases considered by the Medical officer, to come under the description of confirmed lunacy; where the liberation of the party would be dangerous to the community, such persons are to be forwarded by the Criminal Judge, under proper custody, to the Superintendent of Police at Madras, in order that they may be lodged in the Lunatic Hospital.

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In all such cases, the lunatics are to be accompanied by the certificate of the European Medical officer on their case.

A report is to be made by the Criminal Judge to the Session Judge, of all such persons confined in the hospital of the jail for a period exceeding six months; and it shall be competent to that officer to issue such orders respecting them, as he may deem necessary, reporting in a special manner for the orders of the Foujdaree Udalut, the cases of all such persons as may have been confined for twelve months or upwards, and not deemed fit objects for the Lunatic Hospital at Madras.

Persons charged with having committed any criminal act in a state of insanity, such as, supposing them sane, would render them on conviction liable to punishment, shall be brought, in the usual manner, before the officer who has cognizance of the crime of which they are accused. In all such cases brought before the Criminal Court, the European Medical officer attached to the jail shall have such prisoners placed under his immediate charge, in the jail hospital: and in cases cognizable by the Session Court, the Criminal Court shall take evidence, not only as to the act charged against the prisoner, but as to the state of his mind when the same was committed.

When such persons are brought before the officer who has cognizance of the crime with which they are charged, he shall investigate the state of their mind when brought to the bar; and if they be then in an undoubted state of sanity, he shall place them on their trial, when the state of their mind at the time of the act charged against them will form a natural object of inquiry, together with all the circumstances that attended the commission of the crime with which they stand charged. If the mental derangement of the prisoner at the time of the crime charged against him is established, he will of course be acquitted, and the same recorded in the usual manner.

When it may appear to the officer who has cognizance of the crime with which such persons stand charged, that they are in a state of insanity when brought to the bar, he shall not proceed to the trial; but shall enter into an investigation, with a view of ascertaining, whether their insanity is absolute, and whether the crime charged was committed by them under such absolute deprivation of reason. If both of these points are established in the affirmative, though want of reason excuses from guilt, and consequently from punishment, yet, with a view to the public safety, he shall direct the prisoner to be detained in confinement, subject to the orders of the Foujdaree Udalut, to whom he shall report all the circumstances of the case, with the opinion of the European Medical Officer attached to the jail hospital, as to whether the prisoner is a fit object for confinement in the Lunatic Hospital at Madras. If, on the other hand, it appears that the prisoner's insanity is only partial, or that he has lucid intervals, he shall be remanded to custody, until he is in a fit state to be placed on his trial—provided that, after such remandment, no such person shall be continued in confinement for a period exceeding twelve months, without a special report of all the circumstances of his case being made to the Court of Foujdaree Udalut, by the officer in whose custody he may be, at the expiration of that period.—*C. O. 1st June,* 1829.

The Court of Foujdaree Udalut having had under consideration a case of murder, in which the prisoner, when brought to the bar, was insane, and in which also from the investigation held agreeably to the last para. of the Circular Order of the 1st June 1829, it was satisfactorily established that the crime charged was committed under a temporary deprivation of reason, direct in modification of the latter part of that Circular Order, that where the result of the said investigation may clearly prove the offence charged to have been committed under a deprivation of reason, the prisoner be discharged by the Session Judge from future trial, and dealt with by the Criminal Judge as any other lunatic person in jail under the same Circular Order.—*C. O. 23d Feb.* 1841.

The proceedings of the Criminal Judges ought to be as public as possible, and held in a place to which all persons feeling an interest in them can have access. The Court resolve to call the attention of the several Criminal Judges to this point, and to desire that they hold all their proceedings in open Court, and that they certify all depositions of prosecutors and witnesses as having been taken on oath before them in open Court. The examinations of prisoners must be similarly certified, omiting the words on oath."—*C. O. 25th Jan.* 1830, *C.*

In cases of suspected poisoning, specimens of the drugs supposed to contain poison shall be forwarded by the Judges direct to the Medical Board, who after analysis, will make known to them the properties of the drugs transmitted.—*C. O. 8th Dec.* 1830.

The adjournment of the Civil Courts forms no ground for any relaxation in the performance of the duties in the criminal department.—*C. O. 7th July,* 1831, *A.*

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Whenever directions are issued to Session Judges to communicate the orders of the Foujdaree Udalut to the subordinate authorities, it is intended that such order shall include the Magistrates of the several Zillahs.—*C. O.* 21*st Feb.* 1834.

With a view to the prevention of the re-employment in the public service, of persons discharged on proof of misconduct rendering them unworthy of future employment, the court of Foujdaree Udalut, with the authority of Government, deem it proper to direct that on the occasion of servants in the police and judicial department being dismissed for recorded misconduct, such as may be deemed to disqualify them for employment, in any situation under Government, a descriptive roll of the individual so discharged be prepared by the officer from whose establishment such servant may have been removed.

DESCRIPTIVE ROLL.

| Name. | Native country. | Caste. | Age. | Height. | Color. | Particular mark of features or defects. | When and why dismissed. |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

*C. O.* 27*th Feb.* 1836, *A.*

These descriptive rolls shall be transmitted by the officers from whose establishment the servant may have been dismissed, together with a full report of the case, to the office of the Foujdaree Udalut, by whom the same will be laid before Government for its consideration and final orders.—*C. O.* 17*th Nov.* 1837.

The Court of Foujdaree Udalut having observed that it is a general practice in trials referred to the Foujdaree Udalut, for dates and *other expressions* in various native dialects to the inserted without explanation of their meaning, resolve to direct that the practice be discontinued as objectionable and inconvenient.

As regards criminal trials, the practice of entering the Native date, without specifying the corresponding English date was prohibited by the Circular Order of the 17th of Jan. 1815, and in directing in their Circular Order of the 2d November 1824, that in the English translations of criminal records a note should be inserted of distance and measurement in feet and inches, the Court of Foujdaree Udalut took occasion to call the attention of the Session Courts to the orders of the 17th January 1315, and to direct that the several Session and Criminal Judges be careful in future to observe the rule indicated therein.—*C. O.* 22*d June*, 1836.

The practice of furnishing individuals with copies of official documents which are not required to be granted under the regulations, or to be produced in the Court, or filed as evidence in suits, or miscellaneous matters before them, being considered objectionable; the Court of Foujdaree Udalut direct that it be discontinued in future, and that copies of such documents be not furnished to any person, without the sanction of Government.—*C. O.* 8*th July* 1836, *A.*

Under instructions received from Government, the Court of Foujdaree Udalut direct that the several judicial authorities in the provinces be prohibited from imposing a fine exceeding ten Rupees upon any subordinate public servant on their establishment, without the special sanction of the Court of Foujdaree Udalut.

In cases, however, where the sum of ten Rupees may exceed the moiety of the individual's salary, it will not be competent to the officer in charge of the establishment to impose a fine exceeding half a month's pay without the special sanction of the Foujdaree Udalut.—*C. O.* 6*th Dec.* 1836, *A.*

The Court of Foujdaree Udalut have repeatedly ruled that the correspondence between the Criminal Judges and the Magistrates shall be carried on by the Heads of those offices, or the persons in charge of them. It is fit and becoming that this rule should be generally observed with regard to *all* departments with which the judicial authorities may have occasion to correspond; and accordingly it is resolved to direct that this form be always observed, unless there be a good and sufficient reason to omit it.—*C. O.* 30*th April*, 1842, *B.*

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# REPORTS AND STATEMENTS.

Reports and Statements are submitted, by, and to, the undermentioned Judicial authorities, under the Regulations, and Circular Orders of the Foujdaree Udalut.

Native Police to Magistrate.
Magistrate to Session Court.
Criminal Court to Magistrate.
Criminal Court to Session Court.
Session Court to Foujdaree Udalut.

## NATIVE POLICE TO MAGISTRATE.

It is evident that the returns from some of the districts exhibit only the number of persons punished by the Village Police for petty offences, and not those dismissed without punishment. As it is the desire of Government that the operations of the Village Police should be brought to view completely, orders will be issued requiring the Magistrates, generally, to take care that the number of persons punished, by the Village Police, be entered in the printed statements under the proper heads.—*C. O. 30th April,* 1832.

The Judges of the Foujdaree Udalut with the sanction of Government desire that the several Magistrates be directed to require the Heads of the District Police to transmit to them monthly statements of all complaints received, showing how and when they were disposed of; and these statements will be submitted by the Magistrate to the Session Court for inspection, together with the Calendars which he is required to furnish according to Clause first, Section XL, Reg. IX of 1816.—*C. O. 31st July,* 1833, *A.*

This Report shall be in the following form:

*Statement of all complaints, received, investigated, and disposed of by the Tahsildar of —— Talook, from the 1st January to 30th June 184 .*

| Names of the Prisoners. | Crime. | Date of offence committed. | Date of complaint. | Date of apprehension. | Date of attendance of the party. | Mode in which the Prisoners were disposed of. | Date of disposal. |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

*C. O. 10th Dec.* 1834.

## MAGISTRATE TO SESSION COURT.

1. Statement of Petty Offences.
2. Statement of Crimes and Misdemeanors.
3. Statement of Robberies, &c.
4. Calendar of persons punished by the Magistrate and his Assistants.
5. Do. of do. discharged by do. do.
6. Do. of do. committed by the Magistrate.
7. Do. of do. do. do. and his Assistants.
8. Report of cases tried by Magistracy under Section LIV, Act VII of 1843.
9. No. of cases forwarded to Criminal Court by Heads of Police.
10. List of Sub-Police Officers.

These statements are to be transmitted half-yearly, their Forms, and the Circular Orders referring to them are as follows:

The originals are forwarded to the Foujdaree Udalut by the Session Court, together with its own Reports, Remarks, &c. retaining copies for its own use.

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ABSTRACT *statement of Robberies and other crimes of heinous nature ascertained by Police Officers or otherwise to have been committed in the Zillah of——since the last half year ; of the number of persons known or supposed to have been concerned in the commission of such crimes ; of the number apprehended and delivered over to the criminal Judge ; and the number disposed of by the Magistracy under the provisions of Section LIV, Act VII, of* 1843.

| | | Computed number of persons concerned. | | Number apprehended and delivered over to the Criminal Judge. | | Number disposed of by the Magistracy under the provision of Section LIV, Act VII of 1843. | |
|---|---|---|---|---|---|---|---|
| | | Cases. | Persons. | Cases. | Persons. | Cases. | Persons. |
| 1 | Robbery and murder........ .................. | | | | | | |
| 2 | Robbery without murder......... ........... | | | | | | |
| 3 | Murder............ .......... ............ | | | | | | |
| 4 | House breaking........ ............ ....... | | | | | | |
| 5 | Receiving stolen goods.... .... .... ....... | | | | | | |
| 6 | Rape, &c............. ................ | | | | | | |
| | Total.............. | | | | | | |

(*Signed*) ——
*Magistrate.*

CALENDAR *of persons punished by the Magistrate and his Assistants in the Zillah of* —— *from* —— *to* —— 18—, *both inclusive.*

| No. | Names of Prisoners. | Offence. | Punishment. | Date. |
|---|---|---|---|---|

(*Signed*) ——
*Magistrate.*

CALENDAR *of persons discharged by the Magistrate and his Assistants in the Zillah of* —— *from* —— *to* —— 18—, *both inclusive.*

| No. | Names of Prisoners. | Offence. | Date of apprehension. | Date of release. | Reasons. |
|---|---|---|---|---|---|

(*Signed*) ——
*Magistrate.*

CALENDAR *of persons committed by the Magistrate of* —— *under the provisions of Clause I, Section V, Regulation VI of* 1827, *and released from confinement from* —— *to* —— 18—, *both inclusive.*

| No. | Names of prisoners. | Date of apprehension. | Abstract of examination, grounds and date of commitment, and by whom committed. | Remarks. |
|---|---|---|---|---|

(*Signed*) ——
*Magistrate.*

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CALENDAR *of persons committed by the Magistrate and his Assistants in the Zillah of ——— under the provisions of Clause I, Section III, Regulation II of* 1822, *and Section VI, Regulation VI of* 1827, *from* ——— *to* ———, 18 ———, *both inclusive, and still in confinement.*

| No. | Names of Prisoners. | Date of apprehension. | Abstract of examination, and grounds and date of commitment, and by whom committed. | Remarks. |
|---|---|---|---|---|

*(Signed)* ———
*Magistrate.*

REPORT *of cases tried by the Magistracy under the provisions of Section LIV, Act VII of* 1843, *from* ——— *to* ——— 18—, *both inclusive.*

| No. | Names of Prisoners. | Abstract of the crime or charge. | Sentence. | Date. |
|---|---|---|---|---|

*(Signed)* ———
*Magistrate.*

STATEMENT *shewing the number of cases forwarded to the Criminal Court by each head of Police in the District of* ——— *and the manner in which they were disposed of from* ——— *to* ——— 18—.

| District or Zemindary | Names of the Talooks. | No. of cases not disposed of in the Criminal Court at the date of the last report. | | No. of cases sent to the Criminal Court by each Head of Police during the half year. | | Total. | | The manner in which the persons were disposed of. | | | | Number of cases under examination. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | Acquitted. | | | | | |
| | | | | | | | | Released unconditionally. | Ordered to be released on security. | Convicted and punished. | Committed for trial before Session Court. | | |
| | | Cases. | Persons. | Cases. | Persons. | Cases. | Persons. | | | | | Cases. | Persons. |

*(Signed)* ———
*Magistrate.*

The Magistrates shall henceforward furnish with their half-yearly Reports to the Session Courts, a statement shewing the number of cases forwarded to the Criminal Court by each Head of Police, and the manner in which they were disposed of.—*C. O.* 11*th August*, 1845.

LIST *of Subordinate Police Officers in the District of (Joint Magistrate's Division) inclusive, from* ——— *to* ——— 18—.

| Talooks. | Names of the Sub-Police Officers. | Date of Appointment. |
|---|---|---|

*(Signed)* ———
*Magistrate.*

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The Court of Foujdaree Udalut deem it proper to direct, as being absolutely necessary to enable the Session Courts and Foujdaree Udalut to determine as to the legality of proceedings held, and particularly as to the validity of confessions taken by the native Officers of Police in cases before those Courts, that the several Magistrates do furnish to the Session Courts, a return specifying the names and dates of appointments of all subordinate Officers, who may have been selected by them under the provisions of Section III, Regulation IV. of 1821, to perform in different parts of each Talook, the Police duties assigned to Tahsildars and other Head Officers of Police, by Sections XXVII, XXVIII, XXIX, XXXI, XXXII, XXXVI, and XXXVII, Regulation XI of 1816.

In furtherance of the object of the above orders, it will be the duty of the several Session Judges to report to the Foujdaree Udalut, in all cases referred by them, whether the proceedings of the Police Officer were held by a person duly authorized under the provisions of the Regulations.—*C. O.* 30*th Nov.* 1821.

## CRIMINAL COURT TO MAGISTRATE.

The Court of Foujdaree Udalut, being of opinion that it is of importance that the Magistrates should receive official information of the mode in which all cases forwarded by them, or by the Police Officers under their authority, to the Criminal Judges, may be disposed of, desire that the several Criminal Judges should furnish to the Magistrates a report of such cases in the subjoined form:

| 1 | 2 | 3 | 4 |
|---|---|---|---|
| No. of the case. | Prisoner's Name or Names. | Crime charged against the prisoner or prisoners. | Mode in which the prisoners were disposed of, and when discharged, the grounds thereof. |

*C. O.* 10*th April*, 1823.

This report is to be transmitted to the Magistracy within twenty-four hours after the proceedings of the Criminal Courts have been brought to a close.—*C. O.* 7*th Sept.* 1844. (No. 161, Para 2).

In the reports and returns of the Criminal Courts the designations of the crimes they embrace, shall be entered as a heading to the statement of the charge, as shewn in the annexed form; and the Magistracy to whom these returns are communicated shall adopt the same designations in the Periodical statements sent in by them.

| | | | |
|---|---|---|---|
| | | GANG ROBBERY.<br>With having, in company with several others, on the night of the ——— come to the prosecutors house, armed with swords, guns, and other weapons, broke open the door thereof, ill-treated the inmates, and robbed therefrom property to the value of ——— | |

*C. O.* 9*th May*, 1845.

In extension of the rule laid down in para 2, Circular Order No. 161, the Foujdaree Udalut resolve to direct that on all occasions when sentences may finally be pronounced on prisoners received from the Magistracy, or Police, or who may otherwise be brought before the established Courts, intimation of the result of the trial shall, within twenty-four hours of the sentence being declared to the prisoners, be transmitted to the Magistracy by the Officer declaring it, in view to the adoption of measures in the Magisterial Department for giving the utmost possible publicity to sentences awarding punishment, at the place where the offence was committed for which the prisoners may have been brought to trial, or at their usual place of habitation, as may appear expedient with reference to the circumstances of the case.—*C. O.* 2*d June*, 1845.

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## CRIMINAL COURT TO SESSION COURT.

| | *Reports.* | *Official Name.* |
|---|---|---|
| 1. | Immediate Report of cases tried.................. | A. |
| 2. | General Monthly do of do ........................ | B. |
| 3. | Report of casualties and of Prisoners released.............. | VI. |
| 4. | Report of Prisoners specially secured at night............ | Monthly reports accompanying B. |
| 5. | Report of Convict labor in Jail.......................... | |
| 6. | Report of Estimate value of the product of the labor of Prisoners............................. | |
| 7. | Statement of Extra Peons employed at the jail.............. | |
| 8. | Statement of Batta paid to Prosecutors and Witnesses........ | |
| 9. | Statement shewing the exercise of the powers of punishment created by Regulation X of 1832........................ | |
| 10. | Calendar.......................................... | |
| 11. | Statement of Crimes and misdemeanors...................... | |

These Forms and the Circular orders referring to them are as follows:

The Court of Foujdaree Udalut with the sanction of Government and under the provisions of Section III, Regulation IX of 1828, direct that a Report in the annexed Form, to be marked A, be furnished to the Session Judges by the Criminal Courts and the Magistrates (when acting under the provisions of Section LIV, Act VII of 1843) within their respective jurisdictions—of every case disposed of by them.

This Report is invariably to be furnished within forty-eight hours after the sentence in each case has been passed: and it will be the especial duty of the Session Judges to require a full explanation of every instance in which the time now specified, has been exceeded.

The Session Judges will immediately proceed to review these Reports with reference to the Rules in force and to the provisions of the General Regulations: and will issue such orders, and record such observations thereon, as they may deem proper and necessary for the guidance of the Subordinate Tribunals: but the Session Judges are required to submit to the Court of Foujdaree Udalut copies only of those cases in the Reports which may have elicited their remarks or orders, with copies also of such remarks and orders.

In order, however, that the Foujdaree Udalut may have the means of exercising a general superintendence over the proceedings of the Lower Criminal Courts—the Court, with the sanction of Government have resolved to revive the Report No. V of the Appendix to Regulation X of 1816, in its original Form (as annexed to this order) to be marked B, which will embrace all cases tried, and the sentences passed in each by those Courts, during each month: and this Report also, the Subordinate Courts will, immediately after the close of each month, lay before the Session Judges.

No. VI. Report of Casualties and of Prisoners released.
Report of Prisoners specially secured at night.
Convict labor Report of the Jail.
Estimated value of the product of the labor of Prisoners.
Statement of extra Peons.
Statement of Batta paid to Prosecutors and Witnesses.
Statement shewing the instances in which the powers of punishment created by Regulation X, of 1832 have been exercised.

The Subordinate Criminal Courts will also furnish to the Session Judges all the other Monthly Statements (as noted in the margin) now forwarded direct to the Foujdaree Udalut: and the Session Judges will, on those Statements also, pass such orders as they may deem requisite, forwarding copies of their orders to the Foujdaree Udalut.

The Session Judges will be careful to dispatch the several Reports and Statements above mentioned, from their respective Courts, to this Court, on the fifteenth day of the

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month succeeding that for which they are furnished: and the Court of Foujdaree Udalut deem it proper to intimate to the Session Judges, the Subordinate Criminal Judges, and the Magistrates, that the Court will consider it their duty to insist upon, and enforce a rigid adherence, to the rules laid down in this order, regarding the periods within which the different Reports are to be submitted by those officers respectively.

## FORM A.

REPORT *of persons apprehended in Zillah ——— and delivered to the———Judge, in the month of ————* .

| No. of the case. | Names of the Prisoners. | Abstract of the Crime or Charge. | Date of | | | Reasons for punishment, or release; or date of commitment. | Explanation of delay, and remarks, &c. |
|---|---|---|---|---|---|---|---|
| | | | Apprehension. | Leaving the Talook. | Arrival. | | |

NOTE.—All reports in this Form to be stitched together and forwarded to the Foujdaree Udalut as a single communication.—Proceedings, held on petitions affecting cases in this report, already passed under ordinary supervision, to be tacked as an appendix, to the next report submitted.

## FORM B.

REPORT *of persons apprehended in the Zillah of ————— and delivered to the Criminal Judge in the month of ———— 18—.*

| Number. | Name. | Abstract of the Crime or Charge. | Date of | | | Punished and in what manner. | Released, or if allowed a fine. | Committed, & the date of commitment. |
|---|---|---|---|---|---|---|---|---|
| | | | Apprehension. | Leaving the Talook. | Arrival. | | | |
| 1 | Pootty Unkadoo | *House breaking and theft.* In having during the night of the 25th Dec. 1846, broken the lock of the door of the prosecutor's house—entered the house, and stolen therefrom property valued at Rupees 75. | December 28th, 1846. | December 29th, 1846. | December 31st, 1846. | Two years imprisonment with hard labour in Irons, under Clause sixth, Sec. II, Regulation VI, of 1822. | | |

ABSTRACT.

Punished........
Committed.......

Total....

*C. O. 18th Jan.* 1847, *No.* 185.

When the crime for which a party may be punished differs from that with which he is originally charged, enter a note of the circumstance, in the column exhibiting the punishment.—*C. O. 4th July*, 1826.

Where the actual crime proved may be of a character different from that recorded in the abstract of the charge, the same to be invariably noted, for the information of the higher Courts, in all Returns, Calendars and Statements.—*C. O. 5th Aug.* 1829.

Whenever the name of a prisoner is inserted in a Report in more than one case, it should in the second, and other cases, be inserted in red ink.—*C. O. 8th Dec.* 1831.

The cause assigned for delay not exceeding five days, when the excuse shall appear satisfactory to the Criminal Court, or shall have been, when unsatisfactory, noticed as such by

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the Magistrate, need not be inserted in the reports; but in all cases where the detention exceeds five days, and in cases where the excuse is not satisfactory, and has been unnoticed by the Magistrate, the reasons assigned for the delay must be entered in the Reports, and the Session Courts will take such notice of them as may appear requisite.—*C. O.* 18*th May*, 1832.

The attention of the Court of Foujdaree Udalut having been drawn to the omission in the usual Monthly Criminal Reports, of the authority under which cases falling within the jurisdiction of Session Judges are committed for trial by those functionaries, it is resolved, in extention of the rule laid down in para 2 of the Circular Order dated 16th November 1831, to require that, the provision of the law under which a commitment is ordered, may invariably be specified.—*C. O.* 23*d June*, 1845.

The following are the Forms of the Monthly Statements alluded to in the margin of the above order of the 18th January 1847, No. 185, with the Circular Orders appertaining to them respectively :

1. Report of Casualties and of Prisoners released.

FORM.

Report *of Casualties and of Prisoners released in the Zillah of* ——— *in the month of* ——— 18 —.

| Number of the case. | Number and names of prisoners. | Crime. | Removal to what place, and when. | Natural death, and when. | Escaped, and when. | Released, and when. |
|---|---|---|---|---|---|---|
| 67 Monthly Report for —— | 1. Veerapen.<br>2. Pitcha Taven. | Theft. | | | | |
| 82 Monthly Report for —— | 1. Soobben.<br>2. Royapen. | Conniving at escape. | | | | |

The number column of this Statement is to exhibit the number originally assigned to the case of the prisoners referred to in the Criminal Reports.—*C. O.* 7*th Dec.* 1827.

ABSTRACT.

Removed . . . . . . .
Died . . . . . . . . . . .
Escaped . . . . . . . .
Released . . . . . . . .

Total . . . . . .

*Report of Prisoners specially secured at night.*

Note.—This report is sent under C. O. 1st March 1811—*which see* in Jail orders—and is usually made by a note appended to the Casualty Report.

*Convict labor Report of the Jail at ———— under the Charge of ————*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| No. of persons in jail. | No. of convicts. | No. held to security. | Total of 2 and 3. | No. in No. 4 sentenced to 7 years labor and upwards. | Remainder liable to labor. | No. worked outside the jail. | No. worked inside the jail. | Expence incurred for the food and clothing of the prisoners during the month | Estimated value of the labor of the prisoners during the month, after deducting the price of the raw materials and other charges. | Net surplus in black, or deficiency in red ink. | Specification of the manner in which the prisoners were employed during the month of———— |
| 300 | 200 | 50 | 250 | 100 | 150 | 70 | 180 | Rs. 1020-4-0 | Rs. 500-0-0 | Rs. 520-4-3 | |

| | |
|---|---|
| Repairing roads...... .... .. .. | 5 |
| Making bricks.... ............... | 60 |
| Cutting wood outside.... ...... | 5 |
| | 70 |
| Weaving...... ...... .. .. ...... | 80 |
| Making Paper......... ......... | 70 |
| Sick............... ....... | 30 |
| Inside...... | 180 |
| Total corresponding with No. 4... | 250 |

NOTE.—This Statement is required by, and its form given in, the C. O. of the 19th January 1831, but columns 9 and 10 are according to the alterations since made by C. O. 25th September 1835. The Estimate, referred to in the latter column, must be formed from the average local valuation of the articles at each station and it was directed by C. O. 14th November 1834, that this statement should invariably shew the total number in hospital, at the date of the report, of all classes of prisoners in Jail, and not merely the number of sick among convicts and security prisoners.

To this Statement a Memo. in the following form is directed to be appended by C. O. 30th December 1833, A.

MEMORANDUM.

*Estimated value of the product of the labor of the prisoners during the Month of* ——

| | Rs. A. P. |
|---|---|
| *(Specify Articles Manufactured, and their value.)* | |
| Total.. | |

DEDUCT.

| | Rs. A. P. |
|---|---|
| *(Specify Materials purchased)* | |
| Net Profit, Rupees.. | |

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It will be the duty of all Officers in charge of Prisoners to enter in this Memorandum the different species of labor to which the services of the convicts may have been applied during the month; and where the work may be of such a nature that an estimate cannot be easily formed of it, viz., road making, repairing bridges, &c., the value of the labor of the convict for the time occupied taken at ¾ of the value of free labor, should be inserted.—*C. O. 25th Sept.* 1835.

ESTIMATE *value of the Product of the labor of the Prisoners during the month of* —— 18—.

| | Rs. | A. | P. | Rs. | A. | P. |
|---|---|---|---|---|---|---|
| 4867 Prisoners employed outside the Jail in making roads, &c. at ¾ hire of free laborer . . . .. ........................ | | | | | | |
| 108 Prisoners employed in cutting wood at ———— ........ | | | | | | |
| Total Company's Rupees and Annas | .... | .. | .. | | | |

*E. E. per*

*(Signed)* ——

*Sub Judge.*

STATEMENT *of Extra Peons employed at the Jail of* —— *in the Month of* ——

| | Rs. | A. | P. |
|---|---|---|---|
| 20 Extra Peons at 5 Rupees each per mensem from 1st to 30th ...... .... | 100 | 0 | 0 |
| 5 do do from 11th to 30th ................. ...... | 16 | 10 | 8 |
| 3 do do from 21st to 30th................ ........ | 6 | 0 | 0 |
| 1 Duffadar at 7 Rupees per month from 1st to 30th ...... ........ .... | 7 | 0 | 0 |
| Total Rupees ......... | 128 | 10 | 8 |

This Statement to be submitted with the Monthly Criminal Report.—*C. O. 16th Aug.* 1834.

NOTE.—A corresponding Statement for each month of the year to be entered in the Annual Statement of contingent charges, with a column shewing the number of *Convicts* on the last day of each month.

The several Officers in charge of jails throughout the Presidency of Fort St. George, are required to transmit to the office of the Civil Auditor together with their *Monthly* and Annual statement of contingent charges a similar statement according to the annexed form, specifying the number of convicts actually worked outside the jail.

| Months in the year. | Number of convicts worked outside the jail. | Number of Peons & Duffadars. | Period. | Amount. | | | Total. | | | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Rs. | A. | P. | Rs. | A. | P. | |
| | | | | | | | | | | |

*C. O. 3d. Nov.* 1836.

ABSTRACT *Statement of Batta paid to Prosecutors and witnesses before the Subordinate Court for the Month of* —— 18—.

| No. of cases. | Number of Prosecutors and Witnesses receiving Batta. | Number of days during which they received Batta. | Total. | | |
|---|---|---|---|---|---|
| | | | Rs. | A. | P. |
| 96 of 1847 | | | | | |
| 100 of do. | | | | | |
| | | Total Rupees ..... | | | |

*Sub Court* } 18—. }

*E. E. per*

*(Signed)* —— *Subordinate Judge.*

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STATEMENT *shewing the instances in which the Power of Punishment created by Regulation X of* 1832, *have been exercised in the month of* ——— 18—.

| Names of the Convicts. | Nature of the Offence. | Nature of the punishment inflicted under the provisions of Section VI, Regulation X of 1832, under which the sentence was awarded. | Remarks. |
|---|---|---|---|
| | | | |

NOTE.—When no punishment has been inflicted during the month, this report need not be sent; but a note of that fact is to be made at the foot of the Casualty Report thus: "no punishment was inflicted during the month under Regulation X of 1832."

A similar statement, in the like form, is to be appended to the Monthly Return exhibiting the manner in which the prisoners have been employed, by every officer in charge of convicts, vested under Regulation I of 1833, with the powers of punishment created by Regulation X of 1832.—*C. O.* 6*th Dec.* 1836, *B.*

CALENDAR *of Prisoners committed, or held to bail by the Subordinate Judge of the Zillah of* ——— *to take their trial before the Session Court.*

| Number. | Names of the parties. | Abstract of the charge, & dates on which they were originally preferred. | Date of Apprehension of the offenders. | Names of the Prosecutor's witnesses. | Abstract of the examination, grounds and date of commitment for trial. | Number of the prisoners held to bail. | Names of the witnesses on the part of the defence. |
|---|---|---|---|---|---|---|---|
| XXII<br>97—1847<br>Police Ameen of ——— | 1. Chinna Mytoo Chetty, Prosecutor,<br>*versus*<br>1. Sobben,<br>2. Ramen,<br>Prisoners. | Possessing stolen property.<br>The Prisoners are charged with having on the ——— &c. | | | | | |

(*Signed*) *B. C.*
*Subordinate Judge.*

The Court of Foujdaree Udalut observe that certain of the Criminal Judges, in preparing the Calendar of persons committed for trial before the Session Court, omit altogether to enter in the column headed "Abstract of the examination, grounds and date of commitment for trial," any abstract of the examinations taken on the case, while certain of those officers on the other hand record in this column of the Calendar, the whole of the contents of each witness's examination at length, omitting merely to specify the question put to him.

The Court of Foujdaree Udalut deem it proper therefore to direct that the attention of the several Criminal Judges be called to this subject, in order that the omission of the important information intended to be conveyed by this column of the Calendar may not recur, and that an "Abstract" of the evidence may be substituted for the full report which is now frequently given.

It will be the duty of the Judges of the Session Court to enforce attention to these instructions on the part of the Criminal Judge.—*C. O.* 17*th April*, 1823.

An Abstract of the examination of the prosecutor should also be entered in the same column.—*C. O.* 25*th May*, 1831.

The Court of Foujdaree Udalut direct that to the "abstract of evidence" in each trial be affixed the *name* as well as the official designation of the Committing Officer, and, with the view of facilitating reference, that in the same column which exhibits the number of

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the trial as it stands in the Calendar, be entered in red ink, its corresponding number, in the Monthly Criminal Reports.—*C. O. 24th Sept.* 1835.

The Court of Foujdaree Udalut direct that in the Monthly Criminal Reports, and in the Calendars laid before the Session Judge, the Talook from which each prisoner was brought shall invariably be specified, in order that the Session Judge may be able to find what parts of a district more particularly require his notice.—*C. O.* 17*th Jan.* 1832.

*Operations of the Subordinate Court of ——— ——— from ——— to ——— 18 .*

| 1 | 2 | | 3 | | 4 | | 5 | | 6 | | | | 7 | 8 | | | | | 9 | | | | 10 | | 11 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Designation of Crimes and Misdemeanors. | No. of persons whose cases were not disposed of by the Subordinate Court at the close of the last report. | | No. brought before the Subordinate Court charged with crimes and misdemeanors committed before the said period. | | No. brought before the Subordinate Court for crimes and misdemeanors committed within the said perid. | | Total of Columns 2, 3 and 4. | | Number of persons acquitted by the Subordinate Court in cases determined by it. | | | | Number convicted and punished. | Punishment inflicted by the Subordinate Court. | | | | | Released for want of evidence in cases punishable by the Session Court. | | | | Committed for trial before the Session Court. | | No. of persons whose cases were not disposed of by the Subordinate Court at the close of this report. | |
| | | | | | | | | | A | B | C | D | | E | F | G | H | I | K | L | M | N | | | | |
| | No. of cases. | No. of prisoners. | No. of cases. | No. of prisoners. | No. of cases. | No. of prisoners. | Number of cases. | Number of prisoners. | Released unconditionally. | No. of persons entered in column A against whom the accusation appeared to be wilfully false and malicious. | Released on security. | Detained on demand of security. | | Imprisoned. | Fined. | Flogged. | Both imprisoned and fined. | Both imprisoned and flogged. | Released unconditionally. | No. of prisoners entered in column K against whom the accusation appeared to be wilfully false and malicious. | Released on security. | Detained on demand of security. | Number of cases. | Number of persons. | Number of cases. | Number of persons. |
| Murder………… | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Murder by Thuggee………… | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Culpable Homicide………… | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Robbery and Murder………… | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Poisoning………… | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Maiming and Wounding, &c.………… | | | | | | | | | | | | | | | | | | | | | | | | | | |
| TOTAL…… | | | | | | | | | | | | | | | | | | | | | | | | | | |

(*Signed*) ———

*Subordinate Judge.*

## SESSION COURT TO FOUJDAREE UDALUT.

1. Calendar of prisoners committed for trial.
2. Report of cases pending on the Calendar.
3. Crimes and misdemeanors.
4. Comparative statement of heinous crimes.
5. Statement of Batta to prosecutors and witnesses.

CALENDAR *of Prisoners committed for trial before the Session Court of* ———

| No. of the Calendar. | Names of the parties. | Abstract of the charges, and date on which they were preferred. | Date of apprehension of the offenders. | Names of the prosecutor's witnesses. | Abstract of the examination, grounds and date of commitment for trial.* | Names of the prisoners held to bail. | Names of the witnesses on the part of the prisoners. | Remarks of the Session Court. | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | Trial when commenced. | Trial when closed. | Futwah, or names of assessors or jurors. | Sentence. | Date of sentence. |

* This column contains a true copy of the corresponding one in the Calendar submitted by the Criminal to the Session Judge, and is certified as such by the latter officer.

In all Calendars, as well as in trials referred, where the number attached to each prisoner before the Police Officer, or Magistrate does not correspond with that entered in the Calendar, the original number must be *affixed* to the prisoner's names in red ink. When the numbering before the Police Officers, Criminal Court, and that entered in Calendar, all disagree, the number given before the Criminal Court should be placed above the name thus:

| | 3 | |
|---|---|---|
| 1 | Moottoo | 2 |
| | 5 | |
| 2 | Sawmy | 4 |
| | 6 | |
| 3 | Abdool | 5 |

*C. O.* 14*th Aug.* 1834.

REPORT *of cases pending (on the* ——— *) and committed for trial during the month of* ——— 18—— *before the Session Court of* ———.

| No. of the case on the file of the Criminal Court. | No. of the case of the Calendar of the Session Court. | Number of prisoners and witnesses for the prosecution and defence. | Crime. | Date of commitment. | Trial when commenced. | Trial when closed. | No. of days occupied in the trial. | Date of Sentence. | Explanation of the delay. |
|---|---|---|---|---|---|---|---|---|---|

NOTE.—This Report is sent on the 1st of the month only when any cases have remained undisposed of more than 25 days from the date of their commitment.

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NOTE ON CALENDAR.—In regard to the Documents to be submitted to the Session Court with this Calendar, see Note on Sec. XX-XXI, Reg. X of 1816 at p. 110, which enactment specified those which were then required. Under the present system as modified by Act VII of 1843, the whole of the original proceedings before the Police or Magistracy are forwarded to the Session Court, as also those held before the Criminal Judge.

These will ordinarily consist of—

1. Original information.
2. Solemn affirmation to the same (including list of stolen property in cases of robbery or theft.)
3. Examination of Prisoners.
4. List of Witnesses named by Prosecutor noting absence, if any, and its cause.
5. Depositions taken.
6. List of Prisoner's Witnesses.
7. Warrant issued for apprehension of Prisoners.
8. Further proceedings of the Criminal Court.

| 12 | 13 | |
|---|---|---|
| No. of trials entered in column 8 referred because the Session Court did not approve of the verdict of the assessors or jury. | No. of cases not disposed of at the close of this report. | |
| | Number of cases. | Number of persons. |
| | | |

... that and the statement for

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*Comparative Statement of heinous Crimes between the years ——— and ———*

| Designation of Crimes. | In 18 —— | | In —— | | Comparison. | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | Increase. | | Decrease. | |
| | No. of cases. | No. of prisoners. | No. of cases. | No. of prisoners. | No. of cases. | No. of prisoners. | No. of cases. | No. of prisoners. |

*(Signed)* ———
*Session Judge.*

NOTE.—This statement is transmitted yearly.

*Statement of Batta paid to Prosecutors and Witnesses attending before the Session Court of ——— during the —— half year of 18 ——*

| Case. | No. of persons receiving Batta. | No. of days during which received Batta. | At each per diem. | Total amount paid to them in each case. Rs. | A. | P. |
|---|---|---|---|---|---|---|
| | | Total Co.'s Rupees . . | | | | |

*Station.*
*Date.*

E. E. per

*(Signed)* ———
*Session Judge.*

NOTE.—To be sent half-yearly in separate cover.

# ADDENDA.

## CIRCULAR ORDERS, OMITTED IN THEIR PROPER PLACE, viz.:

### MISCELLANEOUS.

Judges and Magistrates must on no account omit to send translations of all documents in the Native languages, which they may forward to the Foujdaree Udalut.—*C. O.* 15*th March*, 1831.

### JAIL.

ADDITIONAL RULES.

1. Convicts under sentence of the Foujdaree Udalut, and Session Court, to be confined in the most secure cells.

2. In Jails where there are no watch towers on the walls, sentries to be posted at night outside, as well as inside the walls of the Jail.

* * * * * * * *

4. There shall be one Duffadar and one Naig for every 20 Peons; the pay of each Duffadar being 7 Rupees, and of each Naig 6 Rupees: and one Peon to every four Convicts liable to labour outside the Jail: four Peons per cent on the Peons employed being added to meet cases of absence from sickness or other causes.

5. The men and their arms to be inspected once each month by the officer in charge of the Jail; and by the Session Judge when he visits the Jail. The Session Judge on such occasions shall suggest the discharge of guards apparently inefficient.

6. In cases of discharge for inefficiency after a considerable period of service, the officer in charge of the Jail shall allow a relative of the discharged Peon to be substituted, if an efficient person can be produced.

NOTE ON CALENDAR.—In regard to the Documents to be submitted to the Session

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7. Convicts to be worked as far as practicable in large gangs, and small detachments never to be authorised, except for special purposes, under the written order of the officer in charge of the Jail.

8. The working of Convicts under sentence of 7 years' imprisonment and upwards, in small detached parties to be strictly prohibited.

9. Six Peons and 1 Naig or Duffadar shall be the strength of the guard requisite for the custody, while at work outside the Jail, of a gang of Convicts consisting of from 19 to 24.

10. For the custody of any gang, or number of prisoners under 19, one Peon for every three Convicts shall be the complement.

11. For the custody of any gang exceeding 24, the Peons employed shall be at the rate of 1 to every 4 prisoners, with one or more officers according to the extent of the gang. In all such gangs, one particular officer shall have the command and control of the guard and prisoners, and shall be responsible for their conduct: and on failure to report any neglect, or other misbehaviour on their part, to the Jailer, or officer in charge of the Jail, he shall be liable to immediate dismissal.

12. When the strength of the guard will not allow of such relative proportion of Peons to Convicts, a portion of the Convicts shall be worked inside the jail, or in the work-house attached to it.

Officers in charge of Jails are authorised to employ pensioned Europeans as Jailers, when vacancies occur, if their services can be obtained at the salaries already fixed; and to employ the labour of the Convicts in erecting buildings for their accommodation, whenever that labour may not be required for other and more important works.

Officers in charge of Jails should endeavour to prevent collusion between the Convicts sentenced to work on the roads and their guards, by frequently alternating the tours of duty of the Peons within and without the Jail, without reference to any fixed and known roster.—*C. O. 22d May*, 1837.

NOTE.—This order is given as modified by C. O. 15th Nov. 1837.

## SEC. VII, REG. X, 1816.

The Mahomedan Law Officers of the Foujdaree Udalut have declared that "a female "who conceals her pregnancy, and buries her bastard child secretly, leaving it doubtful to "every one but herself whether the child were born alive or not, is liable to Tazeer in pro-"portion to her guilt."—*C. O. 18th Jan.* 1843.

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TO THE

# CIRCULAR ORDERS

OF THE

# FOUJDAREE UDALUT.



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